

IN THE
Supreme Court of the United States

OCTOBER TERM, 1996

CITY OF CHICAGO, *et al.*,
v. *Petitioners,*

INTERNATIONAL COLLEGE OF SURGEONS, *et al.*,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

JOINT APPENDIX

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LIST OF OMITTED ITEMS

The following opinions, decisions, judgments and orders have been omitted from this Joint Appendix because they appear on the following pages in the appendices to the Petition for Writ of Certiorari:

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| Opinion of the United States District Court for the Northern District of Illinois, dated August 27, 1991 | 94a-96a |
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| Judgment of the United States District Court for the Northern District of Illinois, entered December 30, 1994 | 90a-91a |
| Order of the United States District Court for the Northern District of Illinois, dated December 30, 1994 | 92a-93a |
| Opinion of the United States Court of Appeals for the Seventh Circuit, dated August 1, 1996 | 1a-23a |
| Judgment of the United States Court of Appeals for the Seventh Circuit, entered August 1, 1996 | 24a-25a |
| Order of the United States Court of Appeals for the Seventh Circuit, dated November 4, 1996 | 97a-98a |

RELEVANT DOCKET ENTRIES

CIVIL DOCKET FOR CASE NO. 91 CV 1587
Filed 3/15/91

| DATE | PROCEEDINGS |
|---------|---|
| 3/15/91 | NOTICE OF REMOVAL by City of Chicago defendants from the Circuit Court of Cook County, case number 91 CH 1361; Notice of Filing—Civil cover sheet. * * * |
| 4/10/91 | MOTION by City defendants to dismiss pursuant to FRCP 12(b) (6). |
| 4/10/91 | MINUTE ORDER of 4/10/91 before the Honorable John F. Grady. Filed defendants' 12(b) (6) motion to dismiss. Motion of defendants to dismiss entered and stayed until the Court's decision on the motion to remand. |
| 4/15/91 | MOTION by plaintiffs to remand. * * * |
| 5/3/91 | MEMORANDUM by plaintiffs in support of motion to remand. |
| 5/24/91 | MEMORANDUM by defendants in opposition to motion to remand. |
| 7/16/91 | REPLY by plaintiffs to response to motion to remand. * * * |
| 8/7/91 | SURREPLY by defendant 1500 Lake Shore Drive to plaintiffs' reply memorandum in support of their motion to remand. |
| 8/14/91 | RESPONSE by plaintiffs to the surreply filed by defendant 1500 Lake Shore Drive to plaintiffs' memorandum in support of their motion to remand. * * * |
| 8/27/91 | MEMORANDUM OPINION. |
| 8/27/91 | MINUTE ORDER of 8/27/91 before the Honorable John F. Grady. Enter Memorandum Opinion denying motion to remand. * * * |

| DATE | PROCEEDINGS |
|----------|--|
| 9/10/91 | MOTION by defendants to dismiss for lack of jurisdiction. * * * |
| 9/11/91 | MEMORANDUM by defendants in support of motion to dismiss for lack of jurisdiction. * * * |
| 9/25/91 | SUBSTITUTE MEMORANDUM by defendants in support of motion to dismiss for lack of jurisdiction. * * * |
| 10/15/91 | MEMORANDUM by plaintiffs in opposition to defendants' motion to dismiss. * * * |
| 11/6/91 | REPLY by defendants to response to motions to dismiss. |
| 1/10/92 | MEMORANDUM OPINION. |
| 1/10/92 | MINUTE ORDER entered 1/10/92 by the Honorable John F. Grady. Defendants' motions to dismiss plaintiffs' complaints in case numbers 91 C 1587 and 91 C 5564 are granted in part and denied in part. * * * |
| 2/21/92 | FIRST CONSOLIDATED AMENDED COMPLAINT for administrative review by plaintiff United States Section of the International College of Surgeons, plaintiff International College of Surgeons, and plaintiff Robin Construction Corporation. |
| 2/21/92 | MEMORANDUM by plaintiff United States Section of the International College of Surgeons, plaintiff International College of Surgeons, and plaintiff Robin Construction Corporation in support of their motion for reconsideration. * * * |
| 3/30/93 | MINUTE ORDER of 3/30/93 by the Honorable John F. Grady. Denying motion for reconsideration of the court's order of 1/10/92 dismissing certain claims with prejudice. |

| DATE | PROCEEDINGS |
|----------|--|
| 3/31/93 | SUPPLEMENTAL MEMORANDUM by plaintiff Robin Construction Company, plaintiff International College of Surgeons, plaintiff United States Section of the International College of Surgeons in support of their motion for reconsideration. * * * |
| 11/8/93 | SUMMARY STATEMENT OF FACTS AND MEMORANDUM OF LAW by plaintiffs Robin Construction Corporation, International College of Surgeons, and United States Section of International College of Surgeons in support of the consolidated complaint for administrative review. |
| 11/8/93 | APPENDIX filed by plaintiffs Robin Construction Corporation, International College of Surgeons, and United States Section of the International College of Surgeons regarding memorandum. * * * |
| 5/4/94 | MEMORANDUM by defendants in support of their response to plaintiffs' consolidated complaint for administrative review. * * * |
| 7/29/94 | REPLY by plaintiff United States Section of the International College of Surgeons, plaintiff International College of Surgeons, plaintiff Robin Construction Corporation to memorandum of law in support of consolidated complaint for administrative review. |
| 12/30/94 | MEMORANDUM OPINION |
| 12/30/94 | MINUTE ORDER of 12/30/94 by the Honorable John F. Grady: Memorandum Opinion entered. The Court enters summary judgment in favor of the defendants and against the plaintiffs. The Court also affirms the Commission's decisions denying plaintiffs' application for demolition permits and an economic hardship exception. |
| 12/30/94 | JUDGMENT ORDER |

| DATE | PROCEEDINGS |
|----------|--|
| 12/30/94 | MINUTE ORDER of 12/30/94 by the Honorable John G. Grady: Judgment Order entered. Final judgment is hereby entered on the plaintiffs' First Amended Consolidated Complaint for Administrative Review, terminating case. |
| 1/27/95 | NOTICE OF APPEAL by the United States Section of the International College of Surgeons, International College of Surgeons, and Robin Construction Corporation from scheduling order terminating case, from motion minute order, from judgment, from motion minute order, and from order. |
| 1/27/95 | JURISDICTIONAL STATEMENT by United States Section of the International College of Surgeons, International College of Surgeons, and Robin Construction Corporation regarding appeal. |
| | * * * |
| 11/6/96 | CERTIFIED COPY of the order from the 7th Circuit. |
| | * * * |
| 2/5/97 | ORDER. |
| 2/5/97 | MINUTE ORDER of 2/5/97 by the Honorable John F. Grady. It is ordered that the case numbered 91 C 1587 be remanded for appropriate resolution in the Circuit Court of Cook County, Illinois, remanding the case to state court and terminating the case. |

CIVIL DOCKET FOR CASE NO. 91 CV 5564
Filed 09/03/91

| DATE | PROCEEDINGS |
|--------|--|
| 9/3/91 | NOTICE OF REMOVAL by defendants from the Circuit Court of Cook County, case number 91 CH 7289—Civil cover sheet. |

| DATE | PROCEEDINGS |
|---------|---|
| 9/4/91 | MOTION by defendants for relatedness to consolidate cases; notice of motion. |
| 9/4/91 | MINUTE ORDER of 9/4/91 before the Honorable John F. Grady. (This order concerns consolidated case number 91 C 1587.) On motion of defendants, order entered consolidating related cause number 91 C 1587 with the above-captioned case. |
| | * * * |
| 9/10/91 | 12(b) (6) MOTION by defendants to dismiss. |
| | * * * |
| 9/11/91 | MEMORANDUM by defendants in support of 12(b) (6) motion to dismiss. |
| | * * * |
| 11/6/91 | REPLY by defendants to response to motion to dismiss. |
| 2/21/92 | FIRST AMENDED CONSOLIDATED COMPLAINT for administrative review by plaintiff Robin Construction Corporation, plaintiff International College of Surgeons, and plaintiff United States Section of the International College of Surgeons, plaintiff International College of Surgeons. |
| 2/21/92 | MEMORANDUM by plaintiff Robin Construction Corporation, plaintiff International College of Surgeons, and plaintiff United States Section of the International College of Surgeons in support of motion for reconsideration. |
| | * * * |
| 3/30/93 | MINUTE ORDER of 3/30/93 by the Honorable John F. Grady. Plaintiffs' motion for reconsideration of the court's order of 1/10/92, dismissing certain claims with prejudice, is denied. |
| | * * * |
| 3/31/93 | SUPPLEMENTAL MEMORANDUM by plaintiff United States Section of the International College of Surgeons, plaintiff International College of |

| DATE | PROCEEDINGS |
|----------|---|
| | Surgeons, and plaintiff Robin Construction Corporation in support of their motion for reconsideration. * * * |
| 4/28/93 | MINUTE ORDER of 4/28/93 by the Honorable John F. Grady. Defendants' motion to dismiss is granted in part and denied in part as set forth in Memorandum Opinion and Minute Order. * * * |
| 12/30/94 | JUDGMENT ORDER. |
| 12/30/94 | MINUTE ORDER of 12/30/94 by the Honorable John F. Grady. Enter Judgment Order. Final judgment entered on the plaintiffs' First Amended Consolidated Complaint for Administrative Review. |
| 12/30/94 | MEMORANDUM, OPINION, AND ORDER. |
| 12/30/94 | MINUTE ORDER of 12/30/94 by the Honorable John F. Grady. Enter memorandum opinion. The court will enter summary judgment in favor of the defendants and against the plaintiffs. The court will also affirm the Commission's decisions denying plaintiffs' applications for demolition permits and an economic hardship exception. |
| 12/30/94 | MEMORANDUM OPINION. |
| 12/30/94 | JUDGMENT ORDER. |
| 1/27/95 | NOTICE OF APPEAL by Robin Construction Corporation, International College of Surgeons, and the United States Section of the International College of Surgeons. |
| 1/27/95 | JURISDICTIONAL STATEMENT by Robin Construction Company, International College of Surgeons and United States Section of the International College of Surgeons regarding appeal. * * * |

| DATE | PROCEEDINGS |
|---------|--|
| 12/2/96 | CERTIFIED COPY of order from the 7th Circuit. Judgment of the District Court is reversed, with costs, and the case is remanded, in accordance with the decision of this court entered on this date. * * * |
| 2/5/97 | MINUTE ORDER of 2/5/97 by the Honorable John F. Grady. Order entered. It is ordered that the case numbered 91 C 5564 be remanded for appropriate resolution in the Circuit Court of Cook County, Illinois, terminating case. |

GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
95-1293

| DATE | PROCEEDINGS |
|---------|---|
| 2/6/95 | Private civil case docketed. |
| 2/6/95 | Filed JURISDICTIONAL STATEMENT of Appellant International College of Surgeons, Appellant United States Section of the International College of Surgeons, and Appellant Robin Construction Corporation. * * * |
| 2/13/95 | ORDER: The court orders these appeals consolidated for purposes of briefing and disposition. * * * |
| 5/22/95 | Filed 15c Appellants' brief. |
| 5/22/95 | Filed 10c appendix by Appellants. * * * |
| 9/1/95 | Filed 15c Appellees' brief by City of Chicago, et al. * * * |
| 9/25/95 | Filed 15c Appellants' reply brief. |

| DATE | PROCEEDINGS |
|----------|--|
| 10/5/95 | ORDER: Argument set for Monday, November 6, 1995 at 10:30 a.m. Each side limited to 30 minutes. |
| 11/6/95 | Case heard and taken under advisement by panel: Circuit Judge William J. Bauer, Circuit Judge Kenneth F. Ripple, Judge Walter J. Skinner. |
| 11/13/95 | Appellants Robin Construction Corporation, United States Section of the International College of Surgeons and the International College of Surgeons filed post argument memorandum. |
| 11/13/95 | Appellees filed post argument memorandum. * * * |
| 6/4/96 | Appellees filed Citation of Additional Authority per Circuit Rule 28(j). |
| 8/1/96 | Filed opinion of the court by Judge Ripple. REVERSED AND REMANDED. |
| 8/1/96 | ORDER: Final judgment filed per opinion with costs. * * * |
| 9/5/96 | Filed 25c Petition for Rehearing with Suggestion for Rehearing En Banc by Appellees. * * * |
| 9/19/96 | Filed 30c CORRECTED Petition for Rehearing with Suggestion for Rehearing En Banc by Appellees. |
| 9/26/96 | Sent copy of request to Appellants requesting their Answer to the Petition for Rehearing with Suggestion for Rehearing En Banc filed by the Appellees on 9/19/96. |
| 10/10/96 | Filed 25c Answer of Appellants Robin Construction Corporation, United States Section of the International College of Surgeons and the International College of Surgeons in Nos. 95-1315 and 95-1293 to Petition for Rehearing with Suggestion for Rehearing En Banc. |

| DATE | PROCEEDINGS |
|---------|---|
| 11/4/96 | ORDER: Petition for Rehearing with Suggestion for Rehearing En Banc is DENIED. * * * |
| 12/2/96 | MANDATE issued and entire record returned with bill of costs. |

GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
95-1315

| DATE | PROCEEDINGS |
|---------|---|
| 2/7/95 | Private civil case docketed. * * * |
| 2/7/95 | Appellant International College of Surgeons, Appellant United States Section of the International College of Surgeons, and Appellant Robin Construction Corporation filed jurisdictional statement. |
| 2/13/95 | ORDER: The court orders these appeals consolidated for purposes of briefing and disposition. * * * |
| 5/22/95 | Filed 15c Appellants' brief. |
| 5/22/95 | Filed 10c appendix by Appellants. * * * |
| 9/1/95 | Filed 15c Appellees' brief by city of Chicago, et al. |
| 9/25/95 | Filed 15c Appellants' reply brief. |
| 10/5/95 | ORDER: Argument set for Monday, November 6, 1995 at 10:30 a.m. Each side limited to 30 minutes. |
| 11/6/95 | Case heard and taken under advisement by panel: Circuit Judge William J. Bauer, Circuit Judge Kenneth F. Ripple, and Judge Walter J. Skinner. * * * |

| DATE | PROCEEDINGS |
|----------|--|
| 11/13/95 | Appellants filed post argument memorandum. |
| 11/13/95 | Appellees filed post argument memorandum. |
| | * * * |
| 6/4/96 | Filed Appellees' Citation of Additional Authority per Circuit Rule 28(j). |
| 8/1/96 | Filed opinion of the court by Judge Ripple: Reversed & remanded. Circuit Judge William J. Bauer, Circuit Judge Kenneth F. Ripple, and Judge Walter J. Skinner. |
| 8/1/96 | ORDER: Final judgment filed per opinion with costs. |
| | * * * |
| 9/5/96 | Filed 25c Petition for Rehearing with Suggestion for Rehearing En Banc by Appellees. |
| | * * * |
| 9/19/96 | Filed 30c CORRECTED Petition for Rehearing with Suggestion for Rehearing En Banc by Appellees. |
| 9/26/96 | Sent copy of request to Appellants requesting 30c of their Answer to the Petition for Rehearing with Suggestion for Rehearing En Banc filed by the Appellees on 9/19/96. |
| 10/10/96 | Filed 25c Answer of Appellants to Petition for Rehearing with Suggestion for Rehearing En Banc. |
| 11/4/96 | ORDER: Denied Petition for Rehearing with Suggestion for Rehearing En Banc of Appellees. |
| | * * * |
| 12/2/96 | MANDATE issued and entire record returned with bill of costs. |

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 91 C 1587

INTERNATIONAL COLLEGE OF SURGEONS, a not-for-profit corporation and UNITED STATES SECTION OF THE INTERNATIONAL COLLEGE OF SURGEONS, a not-for-profit corporation, and ROBIN CONSTRUCTION CORPORATION, a for-profit corporation,

Plaintiffs,

v.

THE CITY OF CHICAGO, a municipal corporation, and its COMMISSION ON CHICAGO LANDMARKS, ITS COMMISSIONERS PETER C. B. BYNOE, Chairman, IRVING J. MARKIN, Vice-Chairman, THOMAS E. GRAY, Secretary, JOHN W. BAIRD, JOSUE GONZALES, AMY R. HECKER, DAVID R. MOSENA, MARIAN DESPRES and CHARLES SMITH, and DANIEL W. WEIL, Commissioner of Department of Buildings of the City of Chicago, 1500 LAKE SHORE DRIVE BUILDING CORPORATION, a for-profit corporation, and THE NORTH STATE, ASTOR, LAKE SHORE DRIVE ASSOCIATION, a not-for-profit corporation,

Defendants.

NOTICE OF REMOVAL

To the Judges of the United States District Court for the Northern District of Illinois:

Defendants City of Chicago ("City"), Commission on Chicago Landmarks, Peter C. B. Bynoe, Irving J. Markin, Thomas E. Gray, John W. Baird, Josue Gonzales, Amy R. Hecker, David R. Mosen, Marian Despres, Charles Smith, and Daniel W. Weil ("City Defendants"), hereby

remove the above-entitled action pursuant to 28 U.S.C. section 1441(b). No appearance or motion is made for unnamed or unserved parties. In support of their removal, the City Defendants state as follows:

1. The City Defendants are defendants in a civil action commenced on February 13, 1991, in the Circuit Court of Cook County of the State of Illinois, No. 91 CH 1361, styled *INTERNATIONAL COLLEGE OF SURGEONS, a not-for-profit corporation and UNITED STATES SECTION OF THE INTERNATIONAL COLLEGE OF SURGEONS, a not-for-profit corporation, and ROBIN CONSTRUCTION CORPORATION, a for-profit corporation v. THE CITY OF CHICAGO, a municipal corporation, and its COMMISSION ON CHICAGO LANDMARKS, ITS COMMISSIONERS, PETER C. B. BYNOE, Chairman, IRVING J. MARKIN, Vice-Chairman, THOMAS E. GRAY, Secretary, JOHN W. BAIRD, JOSUE GONZALES, AMY R. HECKER, DAVID R. MOSENA, MARIAN DESPRES and CHARLES SMITH, and DANIEL W. WEIL, Commissioner of Department of Buildings of the City of Chicago, 1500 LAKE SHORE DRIVE BUILDING CORPORATION, a for-profit corporation, and THE NORTH STATE, ASTOR, LAKE SHORE DRIVE ASSOCIATION, a not-for-profit corporation*. A copy of the complaint and summons, and an affidavit filed pursuant to § 3-105 of the Illinois Code of Civil Procedure in the proceeding are attached hereto.

2. The action alleges that the Landmark Ordinance of the City of Chicago violates the United States Constitution and that certain actions of defendant Commission on Chicago Landmarks ("Commission") violated plaintiffs' rights under the United States Constitution. Plaintiffs request that the court find the Landmark Ordinance unconstitutional on its face and as applied to the property that is the subject of the action. The specific allegations which raise issues under federal law are paraphrased below.

- a. The Landmark Ordinance is allegedly unconstitutional on its face in violation of the due process provisions of the Constitution of the United States, in that it authorizes the Commission to preliminarily designate private property as a landmark without giving property owners prior notice or an opportunity to present evidence in opposition to the preliminary landmark designation.

Complaint, para. 16(a).

- b. The Landmark Ordinance is allegedly unconstitutional on its face in violation of the equal protection and due process provisions of the United States Constitution, in that it authorizes landmark designation of buildings owned by not-for-profit corporations, while excluding from landmark designations buildings owned by religious organizations and used primarily as a place for the conduct of religious ceremonies.

Complaint para. 16(d).

- c. The designation of the subject property as a landmark allegedly constitutes a taking of property of the Plaintiffs without just compensation in violation of the Fifth Amendment and Fourteenth Amendment to [the] Constitution of the United States.

Complaint, para. 16(e).

- d. The Designation Ordinance as applied to the Subject Property allegedly denies Plaintiffs equal protection of the law and deprives Plaintiffs of [their] property without due process of law, in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States in that it arbitrarily and capriciously designates every facade of every building in the district as protected by the district designation, whereas, on information and belief, Plaintiffs allege that the Commission has

recommended and the City Council of Chicago, by the enactment of other designation ordinances, has enacted landmark districts which have designated as landmarks only those portions of the buildings in the district that can be seen from the public right-of-way.

Complaint, para. 16(g).

- e. The Commission allegedly deprived Plaintiffs of their right to a fair, independent and impartial consideration of their plans to develop the Subject Property and have violated Plaintiffs' rights of due process and equal protection.

Complaint, paras. 16(h), (j), and (k).

- f. The Decision, being based upon a hearing at which Plaintiffs allegedly were not afforded a full and fair hearing and where Plaintiffs allegedly were not permitted to present evidence concerning the proposed new construction on the Subject Property when the Commission was required to consider such evidence by its Rules and Regulations is allegedly arbitrary, capricious and violates procedural due process and as such is unconstitutional and void.

Complaint, para. 16(i).

- g. The Commission allegedly deprived Plaintiffs of their right to due process under the Constitution of the United States by refusing to permit Plaintiffs to present evidence in support of their contention that the Designation Ordinance is arbitrary, capricious and unreasonable.

Complaint, para. 16(n).

3. This Court has original jurisdiction to hear suits to redress violations of rights guaranteed by the United States Constitution pursuant to 28 U.S.C. sections 1331 and 1343. Petition[ers] are entitled to remove this action

pursuant to the provisions of 28 U.S.C. section 1441(b), in that it appears from the face of plaintiffs' complaint that this is a civil rights complaint which arises under the United States Constitution, and the matter involves a federal question.

4. The other defendants in this proceeding, 1500 Lake Shore Drive Building Corporation and the North State, Astor, Lake Shore Drive Association have consented to the removal of this suit to federal court.

WHEREFORE, Petitioners pray that the above-described action now pending in the Circuit Court of Cook County be removed therefrom to this Court.

Respectfully submitted,

KELLY R. WELSH
Corporation Counsel of the
City of Chicago

By: /s/ Craig J. Hanson
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 91 C 1587

(Caption Omitted)

NOTICE OF FILING

PLEASE TAKE NOTICE that on March 15, 1991, I filed with the Clerk of the above Court Defendants City of Chicago, Commission on Chicago Landmarks, Peter C. B. Bynoe, Irving J. Markin, Thomas E. Gray, John W. Baird, Josue Gonzales, Amy R. Hecker, David R. Mosen, Marian Despres, Charles Smith, and Daniel W. Weil's Appearance and Notice of Removal, copies of which are attached hereto and hereby served upon you.

KELLY R. WELSH
Corporation Counsel of the
City of Chicago

By: /s/ Craig J. Hanson
CRAIG J. HANSON
Assistant Corporation Counsel

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[Certificate of Service Omitted]

IN THE CIRCUIT COURT
OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

No. 91 CH 01861

INTERNATIONAL COLLEGE OF SURGEONS, a not-for-profit corporation and UNITED STATES SECTION OF THE INTERNATIONAL COLLEGE OF SURGEONS, a not-for-profit corporation, and ROBIN CONSTRUCTION CORPORATION, a for-profit corporation,

Plaintiffs,

v.

THE CITY OF CHICAGO, a municipal corporation, and its COMMISSION ON CHICAGO LANDMARKS, ITS COMMISSIONERS, PETER C.B. BYNOE, Chairman, IRVING J. MARKIN, Vice-Chairman, THOMAS E. GRAY, Secretary, JOHN W. BAIRD, JOSUE GONZALES, AMY R. HECKER, DAVID R. MOSENA, MARIAN DESPRES and CHARLES SMITH, and DANIEL W. WEIL, Commissioner of Department of Buildings of the City of Chicago, 1500 LAKE SHORE DRIVE BUILDING CORPORATION, a for-profit corporation, and THE NORTH STATE, ASTOR, LAKE SHORE DRIVE ASSOCIATION, a not-for-profit corporation,

Defendants.

COMPLAINT FOR ADMINISTRATIVE REVIEW

Plaintiffs, INTERNATIONAL COLLEGE OF SURGEONS, a not-for-profit corporation, UNITED STATES SECTION OF THE INTERNATIONAL COLLEGE OF SURGEONS, a not-for-profit corporation, and ROBIN CONSTRUCTION CORPORATION, a for-profit corpor-

ation, by their attorneys DANIEL L. HOULIHAN, DANIEL L. HOULIHAN & ASSOCIATES, LTD., and RICHARD J. BRENNAN and TERI LEE FERRO, WINSTON & STRAWN, complaint against THE CITY OF CHICAGO, a municipal corporation, and its Administrative Agency, the COMMISSION ON CHICAGO LANDMARKS, and ITS COMMISSIONERS, PETER C.B. BYNOE, Chairman, IRVING J. MARKIN, Vice-Chairman, THOMAS E. GRAY, Secretary, JOHN W. BAIRD, JOSUE GONZALES, AMY R. HECKER, DAVID R. MOSENA, MARIAN DESPRES, and CHARLES SMITH, and DANIEL W. WEIL, Commissioner of Department of Buildings of the City of Chicago, 1500 LAKE SHORE DRIVE BUILDING CORPORATION, a for-profit corporation, and THE NORTH STATE, ASTOR, LAKE SHORE DRIVE ASSOCIATION, a not-for-profit corporation, defendants, and allege as follows:

1. Plaintiff, International College of Surgeons, is a not-for-profit corporation organized and existing under the laws of the District of Columbia, and Plaintiff, United States Section of the International College of Surgeons is a not-for-profit corporation organized and existing under the laws of the District of Columbia, collectively referred to herein as "the College." The College maintains its principal offices in Chicago, Illinois.

2. Robin Construction Corporation ("Robin") is a corporation licensed and authorized to do business in the State of Illinois, engaged in the real estate development business including the development and the construction of buildings used as multiple family dwellings. By virtue of certain contracts, Robin is a contract purchaser and principal developer of the Subject Property described in paragraph 8 hereof.

3. Defendant, The City of Chicago, is a municipal corporation organized and operating pursuant to the laws of Illinois in the County of Cook, which by an ordinance

adopted by the City Council [of] Chicago on March 11, 1987, hereinafter referred to as the "Landmarks Ordinance" (Municipal Code of Chicago, Chapter 21, Sections 21-62 through 21-95), created and constituted the defendant the Commission on Chicago Landmarks (the "Commission") as an administrative agency authorized to make final decisions within the meaning of the Administrative Review Act (Ill.Rev.Stat. 1990, Ch. 110, §§ 3-101, et seq.).

4. Defendant, Peter C.B. Bynoe, is the Chairman of the Commission and presided as the Hearing Officer at the public hearing described herein. The defendants, Irving J. Markin, Thomas E. Gray, John W. Baird, Josue Gonzales, Amy R. Hecker, David R. Mosen, Marian Despres and Charles Smith, are all of the other Commissioners of the Commission, all of whom acted together as the Commission.

5. Defendant, Daniel W. Weil, is the Commissioner of Department of Buildings of the City of Chicago, and is designated by the Municipal Code of Chicago as the official responsible for the issuance of demolition and building permits.

6. Defendant, 1500 Lake Shore Drive Building Corporation, is a for-profit corporation organized and existing under the laws of the State of Illinois, which was granted "Party Status" by the Commission at a public hearing on December 18, 1990, concerning the demolition permits and proposed redevelopment which are the subject of this proceeding.

7. Defendant, The North State, Astor, Lake Shore Drive Association is a not-for-profit corporation organized and existing under the laws of the State of Illinois, which was granted "Party Status" by the Commission at a public hearing on December 18, 1990, concerning the demolition permits and proposed redevelopment which are the subject of this proceeding.

8. Plaintiffs, the College, are the owners, as tenants-in-common, of two parcels of real estate situated in the City of Chicago commonly known as 1516-1524 North Lake Shore Drive, Chicago, Cook County, Illinois (the "Subject Property"). The Subject Property is improved with two buildings which the College has owned for more than 40 years, and in which the College operates its administrative headquarters and the International Museum of Surgical Science and Hall of Fame ("Museum").

9. On June 28, 1989, the City Council of the City of Chicago, pursuant to the recommendation of the defendant Commission, enacted a designation ordinance known as "The Seven Houses on Lake Shore Drive District Ordinance" (the "Designation Ordinance") wherein it designated the Subject Property and five other parcels as a Landmark District, referred to herein as the "Seven House District." Such action was taken pursuant to the Landmark Ordinance. The inclusion of the Subject Property within the Seven House District was made over the objection of the College.

10. On or about October 5, 1990, Plaintiffs caused to be filed with the City of Chicago, Department of Buildings, four demolition permit applications, which applications sought permits for the demolition of certain portions of the rear of the main buildings and the coach houses now existing on the Subject Property as part of Plaintiffs' redevelopment request for the Subject Property. Pursuant to the provisions of the Landmark Ordinance, the Department of Buildings referred the demolition applications to the Commission on October 10, 1990.

11. On October 23, 1990, the Commission, pursuant to Section 21-79 of the Landmark Ordinance, made a preliminary decision that the buildings to be demolished would adversely affect or destroy a significant historical and architectural feature of the improvements in the Seven House District, referred to by the Commission as

"critical features," and issued its preliminary decision disapproving the applications for demolition permits.

12. On November 6, 1990, pursuant to Plaintiffs' request under Section 21-82 of the Landmark Ordinance, the Commission held an informal conference with Plaintiffs. During said conference Plaintiffs were permitted to present a partial description of their plans for a proposed redevelopment of the Subject Property. Plaintiffs' proposed redevelopment will preserve and maintain the east forty feet of the two principal buildings which front on North Lake Shore Drive in their present form. Plaintiffs allege that their redevelopment plans will preserve and maintain all of the critical features of the Subject Property, including certain rooms occupied by the Museum even though no portion of the interiors of any of the buildings in the Seven House District are protected by the Designation Ordinance. At the informal conference, the Commission ruled that Plaintiffs' plans for the redevelopment of the property were not material to its consideration of the demolition permits and that it would not consider any evidence pertaining to the redevelopment. As a result of the Commission's refusal to consider or review Plaintiffs' proposed redevelopment plan, the Commission and Plaintiffs were unable to reach an accord as provided for in Section 21-82 at the informal conference or at any time thereafter.

13. On December 18, 1990, a public hearing was held pursuant to Section 21-83 of the Landmark Ordinance at which Plaintiffs offered evidence to prove that Plaintiffs' redevelopment plan, including the demolition permits, should be approved and issued. As the record of the public hearing reflects, Plaintiffs were prevented from presenting any evidence in support of their proposed redevelopment of the property and plaintiffs were permitted only to present evidence concerning the portions of the buildings to be demolished without regard to the contemporaneous redevelopment of the Subject Property.

Plaintiffs were not permitted to present evidence describing Plaintiffs' proposed redevelopment on the Subject Property notwithstanding the fact that such evidence must be considered under the express provisions of the Landmark Ordinance and the Commission's Rules and Regulations. The Commission's refusal to permit any evidence of the proposed redevelopment denied Plaintiffs their rights to present evidence that was material and relevant to the issues and thereby denied Plaintiffs due process of law. Plaintiffs were further denied due process at said public hearing in that the Hearing Officer, the Commission's Chairman, Peter C.B. Bynoe, refused to permit Plaintiffs to make any offer of proof of any evidence describing the new construction which Plaintiffs proffered and which the Hearing Officer refused to receive in evidence.

14. On January 9, 1991, the Commission rendered a final administrative decision; a copy of the Finding and Decision of the Commission, marked "Exhibit A," is attached hereto and made a part hereof, and is hereinafter referred to as the "Decision."

15. The Decision adversely affects the legal rights and privileges of the Plaintiffs, and terminated the proceedings before the Commission. A copy of the Decision was served upon Plaintiffs on January 10, 1991.

16. Judicial review of the Decision is sought because the decision is erroneous, illegal and void for one or more of the following reasons:

a. The Landmark Ordinance upon which the Decision is predicated is unconstitutional on its face in that in violation of the due process provisions of the Constitution of the State of Illinois and the Constitution of the United States, it authorizes the Commission, pursuant to Section 21-67 of the Landmark Ordinance, to preliminarily designate private property as a landmark, whereupon an owner is thereby effectively prevented from demolishing existing struc-

tures or constructing new structures that would otherwise be legally permitted under existing land use and building code regulations. The Landmark Ordinance authorizes such preliminary designation without giving the owners of such property prior notice of such landmark action or an opportunity to present evidence in opposition to the landmark designation before the Commission makes its preliminary determination which designates the owner's property as a landmark. In addition, the ordinance permits such preliminary designation of landmark status to remain in full force and effect without notice to the owner or an opportunity for a hearing for an indefinite and indeterminate period of time, that is until the Commission, at its sole discretion, elects to give notice to the owner of the preliminary determination action it has taken.

b. The Landmark Ordinance is unconstitutional on its face in that in violation of the Constitution of the State of Illinois it delegates to the Landmark Commission the legislative power to designate landmark districts consisting of private property without providing legally sufficient criteria to be applied by the Commission or the City Council in designating a landmark district.

c. The Landmark Ordinance is unconstitutional on its face in that in violation of the Constitution of the State of Illinois, Section 21-77, [it] purports to authorize and delegate to the Commission the legislative power to approve permits for alteration, reconstruction, erection, demolition, relocation or other work only upon the approval of the Commission without providing legally sufficient criteria to be applied by the Commission in determining whether to approve such permit applications.

d. The Landmark Ordinance is unconstitutional on its face in that in violation of the equal protection and due process provisions of the Constitution

of the State of Illinois and the Constitution of the United States, it authorizes the landmark designation of buildings owned by not-for-profit corporations that have obtained and maintain tax exempt status from the State of Illinois and the Internal Revenue Service of the United States, while excluding from landmark designation buildings owned by religious organizations and used primarily as a place for the conduct of religious ceremonies.

e. The Designation Ordinance is unconstitutional as applied in that by designating the Subject Property as a landmark it has prevented the Plaintiffs from implementing their development plans which were adopted and decided upon prior to the enactment of the Designation Ordinance and as such takes the property of the Plaintiffs without just compensation in violation of the taking provisions of Section 2 of Article I of the Constitution of the State of Illinois and the Fifth Amendment and Fourteenth Amendment to Constitution of the United States.

f. The Designation Ordinance is illegal and unconstitutional in that it arbitrarily and capriciously groups seven non-contiguous buildings into one purported landmark district when the seven buildings cannot be viewed as one unified district having common characteristics or features, and in excluding from the Seven House District buildings situated between the designated buildings which have equal or greater landmark characteristics and qualities than the buildings included in the Seven House District.

g. The Designation Ordinance as applied to the Subject Property denies Plaintiffs equal protection of the law and deprives Plaintiffs of its property without due process of law, in violation of Section 2 of Article I of the Illinois Constitution and of the Fifth and Fourteenth Amendments to the Constitution of the United States in that it arbitrarily and capri-

ciously designates every facade of every building in the district as protected by the district designation. On information and belief, Plaintiffs allege that the Commission has recommended and the City Council of Chicago, by the enactment of other designation ordinances, has created nineteen other landmark districts; that all other designation ordinances creating landmark districts have designated as landmarks only those portions of the buildings in the district that can be seen from the public right-of-way which satisfy the criteria of the Landmark Ordinance. The Commission's professional staff in its analysis of landmark criteria applicable to the Seven Houses on Lake Shore Drive expressly stated with respect to the Subject Property:

As is the case with all districts designated by the Commission, critical features are defined as only those parts of the buildings visible from the public way.

The Commission, having been advised by the College of its plans for the redevelopment of the Subject Property by the construction of a new building on the rear of the Subject Property, recommended and the City Council, in enacting the Seven House District Ordinance, designated as protected by the district designation every facade of every building in the Seven House District solely for the purpose of preventing Plaintiffs' proposed redevelopment. Thereafter, the City permitted the owners of two other buildings in the Seven House District, to wit: 1250 and 1254 North Lake Shore Drive, Chicago, Illinois to demolish portions of existing buildings and to construct substantial additions to those buildings. The Commission's refusal to permit Plaintiffs to demolish structures that cannot be seen from the public way and permitting the owners of the other building[s] in the Seven House District to demolish portions of existing buildings and to construct substantial addi-

tions to those buildings is arbitrary, capricious and unreasonable and an unconstitutional denial of Plaintiffs' right to equal protection and due process.

h. The Commission in violation of its designated purpose and in breach of its powers and duties as an administrative agency willfully and deliberately acted in a way designed and intended to deprive Plaintiffs of their right to a fair, independent and impartial consideration of their plans to redevelop the Subject Property. The Commission's actions with respect to Plaintiffs' proposed redevelopment have deprived Plaintiffs of their rights of due process and equal protection and the protections and benefits provided owners of property under the Landmark Ordinance by reason of the following actions and conduct of the defendants:

(i) At the Commission's regular meeting on June 1, 1988, the Commission's staff recommended the creation of the Seven House District. At its next regular meeting on July 6, 1988, the Commission made a preliminary determination pursuant to Section 21-67 of the Landmark Ordinance that the Seven House District satisfied one or more of the Landmark Ordinance criteria for designation as a landmark district.

(ii) On or about February 1, 1989, the College presented to the Commission's Permit Review Committee its plans for the redevelopment of the Subject Property. [The] College advised the Commission that for many years it had plans to redevelop the Subject Property, which plans had been adopted by the College prior to the time the Commission took any action with respect to the Seven House District.

(iii) Upon learning of the College's antecedent plans to redevelop the Subject Property,

the Commission proceeded on a course of conduct that was designed and intended to foreclose any possible redevelopment of the Subject Property. The Commission's actions thereafter were in all respects adversarial to Plaintiffs' redevelopment plans, and as such were in direct violation of the Commission's duty to provide Plaintiffs with an impartial and fair hearing and evaluation of its redevelopment plans and in violation of its duty to assist owners with the future use, rehabilitation and redevelopment of both designated or potential landmarks or structures in landmark districts, as required by Section 21-65 of the Landmark Ordinance.

(iv) The Commission's course of conduct which was intended to foreclose any possible future redevelopment of the Subject Property and demonstrates the bias and adversarial position of the Commission toward Plaintiffs which was evidenced by numerous actions of the Commission, including, but not limited to the following:

(A) After being informed of the College's plans for the redevelopment of the Subject Property, the Commission prepared a draft ordinance and recommendation to the City Council that was drafted in such a way as to designate not only the portion of the buildings on the Subject Property that can be seen from the public way but all of the exterior faces of all of the structures and all of the "streetscapes" within the boundaries of the proposed District, thereby precluding any possible future redevelopment on the Subject Property, notwithstanding the fact that the Commission's staff had recommended in its original recommendation to the Commission that only

those parts of the buildings that could be seen from the public way would be protected by the creation of the Seven House District.

(B) The proceedings conducted at the informal conference held on November 6, 1990 pursuant to Section 21-82 demonstrate the open hostility of the Commission and its members to Plaintiffs and their proposed redevelopment.

(C) The Commission's refusal to consider any evidence describing the proposed development at the Public Hearing held on December 18, 1990, including the unjustified and arbitrary refusal of the Commission to permit Plaintiffs to make any offer of proof of any of the testimony or exhibits the Hearing Officer refused to receive in evidence.

(D) The Commission's retention of two expert witnesses to testify in opposition to Plaintiffs' application.

(E) The restrictions and limitations imposed by the Commission on Plaintiffs' expert witness' efforts to testify that the Designation Ordinance was fatally flawed in that it arbitrarily included seven buildings on North Lake Shore Drive while excluding other buildings that possessed historical and architectural characteristics that were equal to or greater than those found in the seven houses.

(F) Notwithstanding Plaintiffs' request that they be permitted to submit a memorandum or brief in support of the applications for demolition permits and the proposed plan for redevelopment, the Com-

mission ruled that it would not consider any such written submission and would not permit Plaintiffs to file or submit any brief or memorandum.

(G) At the Commission's Regular meeting on January 9, 1991, the Commission ruled that the College's application, previously filed with the Commission pursuant to Section 21-76 of the Landmark Ordinance requesting that the Commission initiate an amendment to the Designation Ordinance, offered no evidence nor provided any rationale based upon the landmark criteria that would cause the Commission to reconsider the boundaries of the Seven House District or any other amendment to the Designation Ordinance. The Commission made such ruling notwithstanding the fact that the Commission gave Plaintiffs no opportunity to present evidence in support of its application to amend the Designation Ordinance, and in fact denied Plaintiffs' request for an opportunity to present evidence in support of its application to amend the Designation Ordinance.

(H) At the Commission's Regular Meeting on January 9, 1991, the Commission ruled that a Substitute Ordinance, which was introduced by Plaintiffs in the City Council of Chicago seeking to amend the Designation Ordinance and which was referred to the Commission by the City Council Committee on Historical Landmark Preservation, be denied since Plaintiffs offered no new evidence that would cause the Commission to consider changing the boundaries of the Seven House Dis-

strict or amending the Designation Ordinance in any other respect. The Commission made such ruling notwithstanding the fact that the Commission gave Plaintiffs no opportunity to present evidence on the Substitute Ordinance, and in fact denied Plaintiffs' request for an opportunity to present evidence in support thereof.

(I) The record of the Commission's proceeding on January 9, 1991 on Plaintiffs' application for four demolition permits as part of its redevelopment plan shows that the Commission willfully and deliberately ignored the requirements of Sections 21-83 of the Ordinance that within thirty (30) days after the conclusion of the hearing it issue a written decision which shall contain the Commission's Findings of Fact that constitute the basis for its decision. The motion to deny the Plaintiffs' application, which was made by the Chairman who stated that the language of the motion had been prepared by the Commission's staff and counsel, contained no Findings of Fact whatsoever. When counsel for Plaintiffs objected to the absence of any Findings of Fact as required by Section 21-83, the Chairman directed the Commission members to bring before them the Findings of Fact that had been previously prepared and distributed to the Commissioners. The Chairman then moved to amend the motion to deny by adding that the then just disclosed Findings of Fact be approved. At no time prior to or during the proceedings held on January 9, 1991 was a copy of the Findings of Fact provided to Plaintiffs' counsel. In further

violation of the Commission's obligation to consider the evidence and the merits of Plaintiffs' application fairly, impartially and at an open meeting, the record affirmatively reflects that the Commission, without a single word of discussion or analysis, adopted verbatim the Findings of Fact that had been previously prepared by persons other than the Commission members.

Plaintiffs allege that the foregoing actions of the Commission demonstrate that the Commission did not provide Plaintiffs with the open, fair and impartial consideration that due process requires of an administrative agency. The Commission, from the beginning of these proceedings through their conclusion, was an adversary that openly, notoriously and persistently oposed and prevented any impartial or fair consideration of Plaintiffs' position.

i. The Decision, being based upon a hearing at which Plaintiffs were not afforded a full and fair hearing and where Plaintiffs were not permitted to present evidence concerning the proposed new construction on the Subject Property, when the Commission was required to consider such evidence by its Rules and Regulations is arbitrary, capricious and the product of a denial of procedural due process and as such is unconstitutional and void.

j. The Commission erroneously interpreted the Landmark Ordinance by restricting its inquiry to a determination as to:

whether or not the properties proposed for demolition contribute to the character of the district and what effect, if any, their removal will have on the character of the district. (Decision, p.3)

The Commission's Rules and Regulations provide in pertinent part:

The Commission will consider allowing the demolition of such non-contributing improvements within designated districts based on the following *two* conditions: (1) the property proposed for demolition is deemed to be non-contributing to the character of the district, and its removal will not have a negative effect on the character of the district; and (2) *the proposed redevelopment of the property is reviewed and approved by the Commission under Section D following, and a binding agreement is signed between the Commission and the applicant which defines the character of the new development.* (Rules and Regulations, Article IV, Section C, emphasis added.)

Notwithstanding the Commission's obligation imposed by the express provisions of the Landmark Ordinance and its Rules and Regulations to consider Plaintiffs' proposed redevelopment, the Commission refused to consider any evidence proffered by Plaintiffs describing its proposed redevelopment, and willfully and deliberately refused to permit Plaintiffs to make any offer of proof that would make a record of such proposed redevelopment in flagrant disregard and violation of Plaintiffs' constitutional right to a full, fair and impartial hearing.

k. The Commission having erroneously defined the issue before it under the Landmark Ordinance as being whether the property proposed for demolition is deemed to be non-contributing to the character of the district and what effect, if any, its removal will have on the character of the Seven House District, arbitrarily, capriciously and totally disregarded

the testimony of Plaintiffs' witnesses Alvin Edelman and John Leahy and refused to permit such witnesses to provide relevant and material evidence.

l. The Findings of Fact made by the Commission are not supported by substantial evidence in the record. Many of the Commission's purported Findings of Fact are supported not by evidence in the record but are based upon statements contained in reports and recommendations of the Commission's staff which are neither in the record nor supported by any substantial evidence in the record.

m. The Commission's Decision is against the manifest weight of the evidence in that it ignores and disregards the uncontroverted substantial evidence presented by Plaintiffs that the Designation Ordinance is fatally flawed and, therefore, arbitrary and capricious in that it purports to include in a single landmark district seven single family buildings that are not contiguous and ancillary and accessory buildings such as garages and coach houses, and excludes from the district adjacent multiple family buildings that possess the same architectural, historical and sociological significance, if any, of the buildings included in the Seven House District.

n. The Commission's refusal to permit Plaintiffs to present evidence in support of their contention that the Designation Ordinance is arbitrary, capricious and unreasonable deprived Plaintiffs of their right to due process under the Constitution of the State of Illinois and the Constitution of the United States.

o. The Findings of Fact in the Decision, to the extent that they rely upon the evidence of Plaintiffs' expert witness Professor Carroll William Westfall, are contrary to the manifest weight of the evidence in that Professor Westfall testified that the portions of the structures proposed to be demolished by Plain-

tiffs were not critical features to the Seven House District, notwithstanding his opinion that said district was fatally flawed in its arbitrary inclusion of accessory buildings that should not have been designated and in its exclusion of other buildings that should have been included in the district.

p. The Decision of the Commission is arbitrary, capricious and illegal in that it applies as criteria in determining whether the demolition permits should be approved, criteria contained in its Rules and Regulations. Section 21-83 of the Landmark Ordinance expressly provides that the Commission's Decision on permit applications "shall contain the Findings of Fact that constitute the basis for the decision consistent with the criteria in Section 21-77." Notwithstanding the mandatory requirements of this section, the criteria, if any, found in Section 21-77 [were] not applied by the Commission.

q. The Commission's Decision is arbitrary, capricious and illegal in that it is predicated upon criteria contained in its Rules and Regulations which were neither authorized nor approved by the Landmark Ordinance.

r. The Commission's Decision is arbitrary, capricious and illegal in that the criteria applied by the Commission from its Rules and Regulations [are] unconstitutionally vague and indefinite.

s. The Decision is contrary to the manifest weight of the evidence and is not supported by substantial evidence.

t. The Commission failed to make legally sufficient Findings of Fact necessary to support its decision to disapprove the four demolition permits.

17. Pursuant to Section 3-108 of the Code of Civil Procedure, Plaintiffs demand that the entire transcript

of evidence taken at the public hearing on December 18, 1990, including all exhibits and the Commission's transcript and minutes of its meetings held on January 9, 1991, be filed by Defendant Commission as part of the record in this case.

WHEREFORE, Plaintiffs request that the Court:

1. Review the Decision of the Commission on Chicago Landmarks rendered on January 9, 1991, and the record of the public hearing held on December 18, 1990 culminating in the Decision;

2. Find and declare that the Landmark Ordinance is unconstitutional on its face;

3. Find and declare that the Landmark Ordinance and the Designation Ordinance as applied to the Subject Property are unconstitutional;

4. Find and declare that the Commission failed to consider Plaintiffs' application for demolition permits and proposed plan for redevelopment as required by the Landmark Ordinance and the Commission's Rules and Regulations, and as a result thereof the Commission's actions be declared illegal and that Plaintiffs be authorized to proceed with the demolition of the structures described in the demolition permits;

5. Find and declare that the Plaintiffs were denied due process and a fair and impartial hearing and consideration by the Commission; that the Commission's conduct demonstrates that the Plaintiffs are precluded from receiving a fair and impartial hearing and consideration by the Commission; that the Decision of the Commission is void; and that the provisions of the Designation Ordinance as they pertain to the Subject Property are void and of no force and effect;

6. Find and declare that the Decision be reversed and held for naught; and

7. That the Court grant such other and further relief which the Court deems lawful and proper.

Respectfully submitted,

INTERNATIONAL COLLEGE OF SURGEONS,
UNITED STATES SECTION OF THE
INTERNATIONAL COLLEGE OF SURGEONS,
and ROBIN CONSTRUCTION CORPORATION

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EXHIBIT A

COMMISSION ON CHICAGO LANDMARKS
320 North Clark Street
Chicago, Illinois

THE FINDINGS AND DECISION OF THE COMMISSION ON CHICAGO LANDMARKS IN THE MATTER OF FOUR PERMIT APPLICATIONS TO DEMOLISH PORTIONS OF 1516 AND 1524 NORTH LAKE SHORE DRIVE.

BACKGROUND:

On October 10, 1990, the Commission on Chicago Landmarks received from the Department of Buildings of the City of Chicago four demolition permit applications filed on behalf of the International College of Surgeons. The applications proposed to demolish the rear portions and coach houses of 1516 and 1524 North Lake Shore Drive, properties located within the SEVEN HOUSES ON LAKE SHORE DRIVE DISTRICT, a designated Chicago Landmark.

The SEVEN HOUSES ON LAKE SHORE DRIVE District was designated a Chicago Landmark by the City Council of Chicago on June 28, 1989. Exercising the home rule authority of the City of Chicago under Article VII, Section 6 of the Illinois Constitution, the City Council of Chicago established the Commission on Chicago Landmarks by ordinance, Chapter 21, Sections 21-62 to 21-95 of the Municipal Code of Chicago, in 1968 and as amended in 1987, for these purposes:

1. To identify, preserve, protect, enhance, and encourage the continued utilization and the rehabilitation of such areas, districts, places, buildings, structures, works of art, and other objects having a special historical, community, architectural, or aesthetic interest or value to the City of Chicago and its citizens;

2. To safeguard the City of Chicago's historic and cultural heritage, as embodied and reflected in such areas, districts, places, buildings, structures, works of art, and other objects determined eligible for designation by ordinance as "Chicago Landmarks;"
3. To preserve the character and vitality of the neighborhoods and central area, to promote economic development through rehabilitation, and to conserve and improve the property tax base of the City of Chicago;
4. To foster civic pride in the beauty and noble accomplishments of the past as represented in such "Chicago Landmarks;"
5. To protect and enhance the attractiveness of the City of Chicago to homeowners, home buyers, tourists, visitors, businesses, and shoppers, and thereby to support and promote business, commerce, industry, and tourism, and to provide economic benefit to the City of Chicago;
6. To foster and encourage preservation, restoration, and rehabilitation of areas, districts, places, buildings, structures, works of art, and other objects, including entire districts and neighborhoods, and thereby prevent future urban blight and in some cases reverse urban deterioration;
7. To foster the education, pleasure, and welfare of the people of the City of Chicago through the designation of "Chicago Landmarks;"
8. To encourage orderly and efficient development that recognizes the special value to the City of Chicago of the protection of areas, districts, places, buildings, structures, works of art, and other objects designated as "Chicago Landmarks;"
9. To encourage the continuation of surveys and studies of Chicago's historical and architectural re-

sources and the maintenance and updating of a register of areas, districts, places, buildings, structures, works of art, and other objects which may be worthy of landmark designation; and

10. To encourage public participation in identifying and preserving historical and architectural resources through public hearings on proposed designations, building permits, and economic hardship variations.

This ordinance requires in part that "no permit for . . . demolition . . . or other work shall be issued to any applicant by any department of the City of Chicago without the written approval of the Commission for any . . . district . . . which has been designated as a 'Chicago Landmark' . . . where such a permit would allow the demolition of any improvement which constitutes all or a part of a landmark. . . ." (Sec. 21-77). Further, "if the Commission finds that the proposed work will adversely affect or destroy any significant historical or architectural feature of the improvement or district or is inappropriate or inconsistent with the designation of the structure . . . or district or is not in accordance with the spirit or purposes of this ordinance or does not comply with the Standards for Rehabilitation established by the Secretary of the Interior, the Commission shall issue a preliminary decision disapproving the application for permit. . . ." (Sec. 21-81).

The Rules and Regulations of the Commission on Chicago Landmarks set forth the procedure and criteria to be considered by the Commission in determining the effect of proposed demolition work. The introduction to this section states in part that:

Landmark districts are composed of many elements, the aggregate of which creates a distinctive environment. These elements include buildings, streetscapes, landscapes, auxiliary buildings, and other physical features which give the district its iden-

tity and constitute the basis for designation. Within any district, there may be a small number of buildings or other elements that do not contribute to the character of the district. The Commission will consider allowing the demolition of such non-contributing improvements within designated districts based on the following two conditions: 1) *the property proposed for demolition is deemed to be non-contributing to the character of the district, and its removal will not have a negative effect on the character of the district*; and 2) the proposed redevelopment of the property is reviewed and approved by the Commission. . . . (emphasis added) (Article IV, Sec. C).

This section identifies five criteria to be considered in evaluating whether a property contributes to the character of the district:

- a) The subject property exhibits the critical features described in the designation ordinance.
- b) The subject property respects the general site characteristics associated with the district.
- c) The subject property respects the general size, shape, and scale associated with the district.
- d) The subject property respects the general historic and architectural characteristics associated with the district.
- e) The materials of the subject property are compatible with the district in general character, color, and texture.

On October 23, 1990, the Commission, by applying the provisions of the landmark ordinance and its *Rules and Regulations*, found that the properties in question do contribute to the character of the district and that the proposed demolition would adversely affect or destroy a significant historical and architectural feature of the im-

provement and district, and, therefore, issued a preliminary decision disapproving the applications for demolition permits.

Subsequently, as provided in Section 21-82, an informal conference with the applicant was held on November 6, 1990, "for the purpose of securing compromise regarding the proposed work so that the work will not in the opinion of the Commission adversely affect any significant historical or architectural feature." No compromise was forthcoming. Consequently, the Commission scheduled a public hearing (per Section 21-83) on the four demolition permit applications for portions of 1516 and 1524 North Lake Shore Drive.

This public hearing was held on December 18, 1990. The purpose of the hearing as set forth by the hearing officer, Mr. Peter Bynoe, Chairman of the Commission, was to take statements and testimony relevant to the effects of the proposed demolition at 1516 and 1524 North Lake Shore Drive on the SEVEN HOUSES ON LAKE SHORE DRIVE DISTRICT in accordance with the above-cited criteria for determining whether the properties contribute to the character of the district. Statements and testimony were limited to the question of whether or not the properties proposed for demolition contribute to the character of the district and what effect, if any, their removal will have on the district's character.

Within 30 days of the completion of this hearing the Commission is required by Section 21-83 to issue its decision in writing including "findings of fact that constitute the basis for the decision consistent with the criteria in Section 21-77" of the landmark ordinance.

SUMMARY OF PUBLIC HEARING:

There were no statements given in support of the applications for demolition by the public present.

There were forty-one statements given in opposition to the applications for demolition by the public present.

The applicant, through their attorneys, Mr. Daniel Houlihan and Mr. Richard Brennan, presented three witnesses:

Mr. Alvin Edelman, attorney and agent for the International College of Surgeons;

Mr. John Lahey, architect, Solomon Cordwell & Buenz;

Dr. Carroll William Westfall, Professor of Architectural History, University of Virginia.

The Commission notes that neither Mr. Adelman nor Mr. Lahey presented testimony directed toward the question before the public hearing; i.e., whether or not the properties proposed for demolition contribute to the character of the district and what effect, if any, their removal will have on the character of the district.

Dr Westfall, in response to a question from the applicant, stated that it was his view that those portions of the property proposed for demolition would not effect critical features of 1516 and 1524 North Lake Shore Drive because they should not be considered critical features. He gave five reasons for his opinion:

1. The portions to be demolished are not visible from the public way.
2. The portions to be demolished are ancillary structures, coach houses, housing service functions and accommodating servants.
3. The portions to be demolished exhibit designs, materials and details that are less high style than the Lake Shore Drive fronts of these properties.
4. The district designation is flawed because it includes service buildings but excludes contemporaneous high-rise apartment buildings.
5. The inclusion of the adjacent older high-rises, and more realistically, all the North Lake Shore

Drive structures predating 1930, would make the portions proposed for demolition "very subordinate, unimportant service structures. . . ."

Under cross examination by the hearing officer:

Q. In your opinion, do those coach houses contribute to the character of the district?

A. The coach houses contribute to the character of the district as designated by this ordinance.

Q. From an historical perspective . . . would there have been any reason for these coach houses to have been built but for the houses on the front . . . of Lake Shore Drive.

A. No.

Q. From an historic point of view, then, is there clearly a linkage between the coach houses and the buildings which they serve?

A. Yes.

Q. Are these buildings architecturally inconsistent with the buildings on Lake Shore Drive. . . ?

A. No, they are architecturally consistent within the framework of the classical system within which they were built.

Later examination by Mr. Thomas Z. Hayward, attorney representing the 1500 North Lake Shore Drive Building Association, a party to the proceedings:

Q. . . . doesn't the two structures that we are talking about, the courtyards, the entire entourage depict a way of life, a design that is not preserved anywhere else along Lake Shore Drive other than in the seven houses that comprise this district?

A. That's the only place that is preserved.

Two witnesses offered expert testimony in opposition to the proposed demolitions:

Mr. Dennis McFadden, Historic Preservation Consultant.

Mr. Howard Decker, architect, Kemp and Decker.

Mr. McFadden's testimony examined the questions of whether or not the property proposed for demolition contributed to the character of the district and what the effect of its removal would be on the district's character, addressing the criteria found in the Commission's *Rules and Regulations*, Article III, Section C. It was the conclusion of the witness that each property met the five criteria used to substantiate their contribution to the character of the district, and in four of the five criteria the property not only respected but also defined the characteristics which are considered critical features of this district.

He stated that the proposed demolition would compromise the design of each structure because each was a three-dimensional design, main house and coach house, composed on the site, and dependent upon one another for meaning. He noted that the properties are visible from points other than Lake Shore Drive. From the public alley the coach houses and rear elevations of the main houses are readily viewable and the variation in design, material, and detail from front to rear are critical features to the understanding of the architectural and social milieu of the district.

In his testimony, Mr. Decker stated that demolition of portions of the rear of 1516 and 1524 and the coach houses would have an adverse effect from three perspectives:

1. The story these sites can tell about our social and cultural life would be compromised, their historic significance lost.
2. These properties represent the work of one of the most important architectural practices (McKim, Meade and White) and one of the most important

individual architects (Howard Van Doren Shaw), and therefore important architectural works would be destroyed.

3. The meaning of architecture, as embodied in this site the hierarchy of its functional and social relationship and as expressed in an integrated design, would no longer be understandable.

FINDINGS OF FACT:

The Commission finds that the demolition proposed for 1516 and 1524 North Lake Shore Drive will effect improvements which constitute part of the landmark and that this effect will be an adverse one, destroying significant historical and architectural features of the district inconsistent with the intent of [the] designation and not in accordance with the spirit and purposes of the landmark ordinance.

Approval of demolition proposals within landmark districts requires that the Commission determine that "the property proposed for demolition is deemed to be non-contributing to the character of the district, and its removal will not have a negative effect on the character of the district." (*Rules*, Article IV, Sec. C). The Commission deems the property proposed for demolition contributes to the character of the district and that its removal will have a negative effect on the character of the district based on consideration of the following five criteria:

- a) *The Commission finds that the property proposed for demolition exhibits the critical features described in the designation ordinance.* The designation ordinance states that: "In the SEVEN HOUSES ON LAKE SHORE DRIVE DISTRICT, the critical features that make an essential contribution to the qualities and characteristics by which the district meets six of the seven criteria for landmark designation are all the exterior faces of all the structures and all the streetscapes within the boundaries."

b) *The Commission finds that the property respects the general site characteristics associated with the district.* All three properties that compose this north segment of the district retain their original site configuration: front lawn, main house, carriage drive, rear courtyard, and coach house.

Mr. Westfall, the applicant's witness, under cross examination acknowledges that, within the SEVEN HOUSES ON LAKE SHORE DRIVE DISTRICT, only here is this illustrative site plan preserved on Lake Shore Drive. He also notes that from a historical point of view there is a clear link between the coach houses and the buildings which they serve.

Mr. McFadden, in his testimony, states that "more than respect these criteria [*Rules*, Article IV, Sec. C, (b)-(e)], the properties at 1516 and 1524 North Lake Shore Drive help define [them]. . . . The loss of these features will compromise the designs of these structures. Each property was designed in its entirety by the architect of record. . . . Each component was a three-dimensional design, and the individual components . . . were composed on the site. . . . By diminishing their physical integrity, the demolition of portions of 1516 and 1524 North Lake Shore Drive properties will reduce to fragments intact artifacts that contribute meaningfully to our understanding of the architectural and social stories told by this district.

Mr. Decker, in his testimony, states that "the demolition of the carriage houses and the rear portions of these buildings would compromise the ability of these structures to provide a cultural and interpretive contribution to the City of Chicago, which is to say without the elements which are now being proposed for demolition, the story that this site—these sites can tell about the history and growth of the social and cultural life of our city is compromised. . . . It's possible for you to . . . understand by virtue of walking

around the site the story that the relationship between these two buildings [main house and coach house] has to tell you about the life that was lived in them and about the architectural character that they both—that is theirs. . . . the integrity of the design arises out of the combination of the main house and service building, accessory building."

c) *The Commission finds that the property respects the general size, shape, and scale associated with the district.* The SEVEN HOUSES ON LAKE SHORE DRIVE DISTRICT is composed of seven, originally single-family, residential structures, three of which have attendant coach houses. All of these structures are similar in size, shape, and scale, and it is these similarities that are the foundation and common thread of the district designation. The designation ordinance notes: "The SEVEN HOUSES ON LAKE SHORE DRIVE DISTRICT has value as an example of the architectural and social heritage of . . . Chicago as the houses portray the character of North Lake Shore Drive as it was originally conceived and developed by the city's elite." Mr. Westfall notes that the principal of these "elite," Potter Palmer, initially fought the encroachment of larger scaled apartment buildings which would forever alter the character of his lakefront drive of single-family mansions. The designation also notes that "the scale, height, size, lot coverage, and bulk of all of the structures [of the district] . . . are established and familiar visual features. . . ."

d) *The Commission finds that the property respects the general historic and architectural characteristics associated with the district.* The seven properties which comprise the district embody the architecture, culture, economy, history, and society of Chicago's upper classes during the two decades immediately before and after 1900. Designed by pre-eminent architects (McKim Meade and White, and Howard Van Doren Shaw), in the fashionable revival styles of the day (renaissance revival) these large single-family

mansions with auxillary buildings, requiring large staffs, bespeak the wealth and social position of their prominent occupants.

Mr. Decker, in his testimony, states that these structures exemplify a way of life "characterized by monumental scale, persons of great wealth who were significant to our city's life in many different ways. And, that life was also characterized by the service buildings at the rear." In developing this point, he discusses the hierarchy of the arrangement of these buildings [front and rear] and states that "it's important . . . not to confuse the presence of architectural hierarchy on the site with its architectural significance. The extent to which a building sits at the rear of a site is not to necessarily conclude that it's not important and significant in the overall composition of the design for the site . . . it's unreasonable to conclude that because [coach houses] are less significantly treated with respect to ornament and materials, they are less significant to our ability to understand their importance, their design, their architecture, who did them, their cultural value, and so on."

e) The Commission finds that the materials of the property are compatible with the district in general character, color, and texture. As noted in d) above, the seven properties of the district exemplify the fashionable architecture of their day. Their construction employed the best available materials and craftsmen.

Mr. Westfall notes the distinction between architectural and material treatments from front to rear. After discussing the Lake Shore Drive facades of the two structures which are crafted in limestone and richly ornamented, he notes that "when you go to the side of the building you see a distinct difference between [the front], which is the finished part of the building, and these parts which are—what can be called the diluted version of the same thing. . . . Where stone is used in front, brick is used in the back.

When stone is carved in the front, stone is left uncarved in the back. In other words, the original design made a distinction between this. Now, this is absolutely characteristic of everything that belongs in classical architecture, running back to the earliest architectural treatises and architectural theories about this sort of thing. . . ." In response to the hearing officer's question regarding whether these buildings (the coach houses) were architecturally inconsistent with the buildings on Lake Shore Drive, Mr. Westfall: "No they are architecturally consistent within the framework of the classical system within which they were built."

The Commission finds that the preponderance of testimony received at the public hearing on the applications to demolish portions of 1516 and 1524 North Lake Shore Drive supports the conclusion that those portions of the main houses and the coach houses proposed for demolition significantly contribute to the character of the district, and their removal will have a negative effect on the character of the district. The applicant's only witness whose testimony addressed any of the issues under consideration at the public hearing concurred with this conclusion, upon cross examination, when asked: "Do those coach houses contribute to the character of the district?" Mr. Westfall answered: "The coach houses contribute to the character of the district as designated by this ordinance."

DECISION OF THE COMMISSION

The Commission on Chicago Landmarks finds that the properties proposed for demolition contribute to the character of the SEVEN HOUSES ON LAKE SHORE DRIVE DISTRICT, and that the proposed demolitions will adversely affect and destroy significant historical and architectural features of the improvements and district, the destruction of which would be inappropriate and inconsistent with the designation of the SEVEN HOUSES ON LAKE SHORE DRIVE DISTRICT and would not be in accord

with the spirit or purposes of this landmark ordinance. Therefore, the Commission on Chicago Landmarks disapproves the four permits to demolish portions of the properties located at 1516 and 1524 North Lake Shore Drive. This decision is the Commission's final decision on these permit applications submitted for review on behalf of the International College of Surgeons, October 10, 1990.

PETER C. B. BYNOE, Chairman

Date

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY
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CCDCH - 60

IN THE NAME OF THE PEOPLE OF THE STATE OF ILLINOIS

INTERNATIONAL COLLEGE OF
SURGEONS, et al,

Plaintiffs

v.

THE CITY OF CHICAGO, et al,

Defendants

SUMMONS IN ADMINISTRATIVE REVIEW

To each defendant:

YOU ARE SUMMONED and required to file an answer in this case or otherwise file your appearance in the office of the clerk of this court located in Room 802, Richard J. Daley Center, Chicago, Illinois, within 35 days after the date of this summons.

FEB 13 1991

WITNESS:

19.....

Aurelia Pucinski

Clerk of Court

Richard J. Brennan
Name WINSTON & STRAWN
Attorney for Plaintiffs
Address 35 W. Wacker
City Chicago, IL 60601
Telephone (312) 558-5600
Atty No. 90875

Daniel L. Houlihan
DANIEL L. HOULIHAN & ASSOCIATES, LTD.
Attorney for Plaintiffs
111 W. Washington, Suite 1631
Chicago, IL 60602
(312) 372-6255

CERTIFICATE OF MAILING

On....., 19....., I sent by registered mail a copy of this summons to each defendant addressed as follows:

Defendant

The City of Chicago.....
Commission on Chicago Landmarks..
Peter C.B. Bynoe, Chairman.....
Irving J. Markin, Vice-Chairman..
Thomas E. Gray, Secretary.....
John W. Baird.....
Josue Gonzalez.....

Address

Walter S. Kozubowski, City Clerk, Rm. 107
121 N. LaSalle St., Chicago, IL 60602
William M. McLenahan, Director, Rm. 516
320 N. Clark St., Chicago, IL 60610
Commission on Chicago Landmarks, Rm. 516
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320 N. Clark St., Chicago, IL 60610
Commission on Chicago Landmarks, Rm. 516
320 N. Clark St., Chicago, IL 60610

Dated.....

FEB 13 1991

Aurelia Pucinski

Clerk of Court

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CCDCH - 60

IN THE NAME OF THE PEOPLE OF THE STATE OF ILLINOIS

INTERNATIONAL COLLEGE OF
SURGEONS, et al,

Plaintiffs

v.

THE CITY OF CHICAGO, et al,

Defendants

NO.

SUMMONS IN ADMINISTRATIVE REVIEW

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WITNESS:19.....

Richard J. Brennan
WINSTON & STRAWN
Attorney for Plaintiffs
Address 35 W. Wacker
City Chicago, IL 60601
Telephone (312) 558-5600
Atty No. 90875

Daniel L. Houlihan
DANIEL L. HOULIHAN & ASSOCIATES, LTD.
Attorney for Plaintiffs
111 W. Washington, Suite 1631
Chicago, IL 60602
(312) 372-6255

CERTIFICATE OF MAILING

On.....19...., I sent by registered mail a copy of this summons to each defendant addressed as follows:

Defendant

Amy R. Hecker.....
David R. Mosena.....
Charles Smith.....
1500 Lake Shore Drive
Building Corporation.....
The North State, Astor, Lake
Shore Drive Association.....
Marian Despres.....

Address

Commission on Chicago Landmarks, Rm. 516
320 N. Clark St., Chicago, IL 60610
Commission on Chicago Landmarks, Rm. 516
320 N. Clark St., Chicago, IL 60610
Commission on Chicago Landmarks, Rm. 516
320 N. Clark St., Chicago, IL 60610
Theodore Johnson, Reg. Agent,
875 N. Michigan Ave., Chicago, IL 60611
Mary Clare Starshak, Reg. Agent,
1335 N. Astor St., Chicago, IL 60610
Commission on Chicago Landmarks, Rm. 516
320 N. Clark St., Chicago, IL 60610

Dated.....19.....

Clerk of Court

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CCDCH - 60

IN THE NAME OF THE PEOPLE OF THE STATE OF ILLINOIS

INTERNATIONAL COLLEGE OF
SURGEONS, et al,

Plaintiffs

v.

THE CITY OF CHICAGO, et al,

Defendants

NO.

SUMMONS IN ADMINISTRATIVE REVIEW

To each defendant:

YOU ARE SUMMONED and required to file an answer in this case or otherwise file your appearance in the office of the clerk of this court located in Room 802, Richard J. Daley Center, Chicago, Illinois, within 35 days after the date of this summons.

WITNESS:19.....

Richard J. Brennan
Name WINSTON & STRAWN
Attorney for Plaintiffs
Address 35 W. Wacker
City Chicago, IL 60601
Telephone (312) 558-5600
Atty No. 90875

Daniel L. Houlihan
Name DANIEL L. HOULIHAN & ASSOCIATES, LTD.
Attorney for Plaintiffs
Address 111 W. Washington, Suite 1631
City Chicago, IL 60602
Atty No. (312) 372-6255

CERTIFICATE OF MAILING

On.....,19...., I sent by registered mail a copy of this summons to each defendant addressed as follows:

| Defendant | Address |
|------------------------------------|-------------------|
| Daniel Weil, Building Commissioner | City of Chicago |
| | Room 900 |
| | 121 N. LaSalle |
| | Chicago, IL 60602 |

Dated.....19.....

Clerk of Court

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

(Captioned Omitted)

AFFIDAVIT PURSUANT TO § 3-105 OF
THE ILLINOIS CODE OF CIVIL PROCEDURE

I, Teri Lee Ferro, being an attorney and duly sworn, deposes that I am familiar with the addresses of each of the defendants in the above-captioned matter to be as listed below and that such addresses are correct as to the best of my knowledge.

The City of Chicago
Walter S. Kozubowski,
City Clerk, Room 107
121 N. LaSalle Street
Chicago, Illinois 60602

Peter C.B. Bynoe, Chairman
Commission on Chicago
Landmarks
Room 516
320 N. Clark Street
Chicago, Illinois 60610

Thomas E. Gray, Secretary
Commission on Chicago
Landmarks
Room 516
320 N. Clark Street
Chicago, Illinois 60610

Commission on Chicago
Landmarks
William M. McLenahan,
Director
Room 516

320 N. Clark Street
Chicago, Illinois 60610

Irving J. Markin,
Vice-Chairman
Commission on Chicago
Landmarks

Room 516
320 N. Clark Street
Chicago, Illinois 60610

John W. Baird
Commission on Chicago
Landmarks

Room 516
320 N. Clark Street
Chicago, Illinois 60610

Josue Gonzalez
Commission on Chicago
Landmarks
Room 516
320 N. Clark Street
Chicago, Illinois 60610

David R. Mosena
Commission on Chicago
Landmarks
Room 516
320 N. Clark Street
Chicago, Illinois 60610

Marian Despres
Commission on Chicago
Landmarks
Room 516
320 N. Clark Street
Chicago, Illinois 60610

The North State, Astor, Lake
Shore Drive Association
Mary Clare Starshak,
Reg. Agent
1335 N. Astor Street
Chicago, Illinois 60610

Amy R. Hecker
Commission on Chicago
Landmarks
Room 516
320 N. Clark Street
Chicago, Illinois 60610

Charles Smith
Commission on Chicago
Landmarks
Room 516
320 N. Clark Street
Chicago, Illinois 60610

1500 Lake Shore Drive
Building Corporation
Theodore Johnson, Reg. Agent
875 N. Michigan Avenue
Chicago, Illinois 60611

Daniel Weil
Building Commissioner
City of Chicago
Room 900
121 N. LaSalle Street
Chicago, Illinois 60602

/s/ Teri Lee Ferro
TERI LEE FERRO

[Jurat Omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 91 C 5564

INTERNATIONAL COLLEGE OF SURGEONS, a not-for-profit
corporation and UNITED STATES SECTION OF THE IN-
TERNATIONAL COLLEGE OF SURGEONS, a not-for-profit
corporation, and ROBIN CONSTRUCTION CORPORATION,
a for-profit corporation,
Plaintiffs,

v.

THE CITY OF CHICAGO, a municipal corporation, and its
COMMISSION ON CHICAGO LANDMARKS, ITS COMMIS-
SIONERS PETER C.B. BYNOE, Chairman, IRVING J.
MARKIN, Vice-Chairman, THOMAS E. GRAY, Secretary,
JOHN W. BAIRD, JOSUE GONZALES, AMY R. HECKER,
DAVID R. MOSENA, MARIAN DESPRES and CHARLES
SMITH, and DANIEL W. WEIL, Commissioner of Depart-
ment of Buildings of the City of Chicago, 1500 LAKE
SHORE DRIVE BUILDING CORPORATION, a for-profit cor-
poration, and THE NORTH STATE, ASTOR, LAKE SHORE
DRIVE ASSOCIATION, a not-for-profit corporation, and
1448 LAKE SHORE DRIVE BUILDING CORPORATION, a
for-profit corporation,

Defendants.

NOTICE OF FILING

PLEASE TAKE NOTICE that on September 5, 1991,
I filed with the Clerk of the above Court Defendants City
of Chicago, Commission on Chicago Landmarks, Peter C.

B. Bynoe, Irving J. Markin, Thomas E. Gray, John W. Baird, Josue Gonzales, Amy R. Hecker, David R. Mosena, Marian Despres, Charles Smith, and Daniel W. Weil, The 1500 Lakeshore Drive Building Corporation, The 1448 Lakeshore Drive Building Corporation, and The North State, Astor, Lake Shore Drive Associations' Appearance and Notice of Removal, copies of which are attached hereto and hereby served upon you.

KELLY R. WELSH
Corporation Counsel of the
City of Chicago

By:/s/ Sheila A. Owens
SHEILA A. OWENS
Assistant Corporation Counsel

SUSAN R. LICHTENSTEIN
Deputy Corporation Counsel
RUTH MOSCOVITCH
Chief Assistant Corporation Counsel
SHEILA OWENS
Assistant Corporation Counsel
Suite 704
180 North LaSalle Street
Chicago, Illinois 60601
(312) 744-0459/7724/2567

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

(Caption Omitted)

NOTICE OF REMOVAL

To the Judges of the United States District Court for the Northern District of Illinois:

Defendants City of Chicago ("City"), Commission on Chicago Landmarks ("Commission"), Peter C. B. Bynoe, Irving J. Markin, Thomas E. Gray, John W. Baird, Josue Gonzales, Amy R. Hecker, David R. Mosena, Marian Despres, Charles Smith, and Daniel W. Weil (Collectively, "City Defendants"), The 1500 Lake Shore Drive Building Corporation, 1448 Lake Shore Drive Building Corporation, and The North State, Astor, Lake Shore Drive Association (Collectively, "Interested Parties") hereby remove the above-entitled action pursuant to 28 U.S.C. section 1441(b). No appearance or motion is made for unnamed or unserved parties. In support of their removal, the City Defendants state:

1. The City Defendants are defendants in a civil action commenced on August 7, 1991, in the Circuit Court of Cook County of the State of Illinois, No. 91 CH 7289, styled *INTERNATIONAL COLLEGE OF SURGEONS, a not-for-profit corporation and UNITED STATES SECTION OF THE INTERNATIONAL COLLEGE OF SURGEONS, a not-for-profit corporation, and ROBIN CONSTRUCTION CORPORATION, a for-profit corporation v. THE CITY OF CHICAGO, a municipal corporation, and its COMMISSION ON CHICAGO LAND-*

MARKS, ITS COMMISSIONERS, PETER C. B. BYNOE, Chairman, IRVING J. MARKIN, Vice-Chairman, THOMAS E. GRAY, Secretary, JOHN W. BAIRD, JOSUE GONZALES, AMY R. HECKER, DAVID R. MOSENA, MARIAN DESPRES and CHARLES SMITH, and DANIEL W. WEIL, Commissioner of Department of Buildings of the City of Chicago, 1500 LAKE SHORE DRIVE BUILDING CORPORATION, a for-profit corporation, and THE NORTH STATE, ASTOR, LAKE SHORE DRIVE ASSOCIATION, a not-for-profit corporation and 1448 LAKE SHORE DRIVE BUILDING CORPORATION, a for-profit corporation. A copy of the complaint and summons, and an affidavit filed pursuant to § 3-105 of the Illinois Code of Civil Procedure in the proceeding are attached hereto.

2. The action alleges that the Landmark Ordinance of the City of Chicago violates the United States Constitution and that certain actions of defendant Commission violated plaintiffs' rights under the United States Constitution. Plaintiffs request that the Court find the Landmark Ordinance unconstitutional on its face and as applied to the property that is the subject of the action. The specific allegations in which plaintiffs raise issues under federal law are paraphrased below.

- a. Plaintiffs allege that the Landmark Ordinance is unconstitutional and invalid on its face in violation of the Fourteenth Amendment of the United States Constitution because it effects a deprivation of life, liberty or property without due process of law; a denial of equal protection of the laws; a taking without just compensation; confiscatory special legislation; and a denial of plaintiffs' development expectations.

Complaint, ¶ 23(a)(b)(c)(k)(m).

- b. Plaintiffs allege that the Landmark Ordinance is unconstitutional and invalid on its face in violation of

the Fifth Amendment of the United States Constitution because it effects a taking of property and a denial of plaintiffs' development plans without just compensation and special confiscatory legislation.

Complaint, ¶ 23(c)(m).

- c. The Landmark Ordinance is unconstitutional and invalid as applied to these plaintiffs in violation of the Fourteenth and Fifth Amendments to the United States Constitution in that it effects a deprivation of property without due process of law; a deprivation of equal protection of the laws; a taking without just compensation; and a denial of plaintiffs' development plans.

Complaint ¶ 23(f)(g)(m).

3. This Court has original jurisdiction to hear suits to redress violations of rights guaranteed by the United States Constitution pursuant to 28 U.S.C. Sections 1331 and 1343. Defendants are entitled to remove this action pursuant to the provisions of 28 U.S.C. Section 1441(b), because plaintiffs' Complaint appears on its face to arise under the United States Constitution, and to involve a federal question.

4. All defendants in this proceeding, including the interested parties, have consented to the removal of this suit to federal court.

WHEREFORE, Defendants request that the above-described action now pending in the Circuit Court of Cook County be removed to this Court.

Respectfully submitted,

KELLY R. WELSH
Corporation Counsel of the
City of Chicago

By: /s/ Sheila A. Owens
 SHEILA A. OWENS
 Assistant Corporation Counsel
 Attorney for the City of Chicago, a municipal corporation, and its Commission on Chicago Landmarks, its Commissioners Peter C. B. Bynoe, Chairman, Irving J. Markin, Vice-Chairman, Thomas E. Gray Secretary, John W. Baird, Josue Gonzales, Amy R. Hecker, David R. Mosena, Marian Despres and Charles Smith, and Daniel W. Weil, Commissioner of Department of Buildings of the City of Chicago

By: /s/ Brian Martin
 BRIAN MARTIN
 Bell, Boyd & Lloyd
 Attorneys for 1500 Lake Shore Drive Building Corporation and 1448 Lake Shore Drive Building Corporation

By: /s/ Thomas J. Murphy
 THOMAS J. MURPHY
 Attorney for North State, Astor, Lake Shore Drive Building Corporation

SUSAN R. LICHTENSTEIN
 Deputy Corporation Counsel
 RUTH MOSCOVITCH
 Chief Assistant Corporation Counsel
 SHEILA OWENS
 Assistant Corporation Counsel
 Suite 704
 180 North LaSalle Street
 Chicago, Illinois 60601
 (312) 744-0459/7724/2567

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

(Caption Omitted)

AFFIDAVIT

SHEILA A. OWENS, being duly sworn on oath, deposes and states that she is one of the attorneys for Petitioners in the above-entitled action; that on the 3rd day of September, 1991, [s]he caused to be filed with the Clerk of the Circuit Court of Cook County, Illinois, a copy of Petitioner's Notice of Removal together with a copy of the original Complaint in the action by leaving said copies with the Clerk of the Court, Chancery Division, Room 802, Daley Center, Chicago, Illinois.

/s/ Sheila A. Owens
SHEILA A. OWENS

[Jurat and Certificate Omitted]

2129 - Served
2229 - Not Served
2329 - Served By Mail

(4-81) CCL-40

IN THE NAME OF THE PEOPLE OF THE STATE OF ILLINOIS

INTERNATIONAL COLLEGE OF SURGEONS,
et al.,

Plaintiffs,

v.

THE CITY OF CHICAGO, et al.

Defendants.

NO.

SUMMONS IN ADMINISTRATIVE REVIEW

To each defendant:

YOU ARE SUMMONED and required to file an answer in this case or otherwise file your appearance in the office of the clerk of this court located in Room 801, Richard J. Daley Center, Chicago, Illinois, within 35 days after the date of this summons.

WITNESS: 19....

..... Clerk of Court

Richard J. Brennan/Daniel L. Houlihan
Name WINSTON & STRAWN/DANIEL L. HOULIHAN & ASSOCIATES, LTD.
Attorney for Plaintiffs
Address 35 West Wacker Drive/111 W. Washington Street
City Chicago, IL 60601/Chicago, IL 60602
Telephone 312/558-5600/312-372-6255
Atty No. 90875/20308

CERTIFICATE OF MAILING

On 19.... I sent by registered mail a copy of this summons to each defendant addressed as follows:

Defendant

| | |
|-------------------------------------|---|
| The City of Chicago..... | Walter S. Kozubowski, City Clerk, Rm 10 |
| Commission on Chicago Landmarks.... | 121 N. LaSalle St., Chicago, IL 60602 |
| Peter C.B. Bynoe, Chairman..... | William M. McLenahan, Director, Rm. 516 |
| Irving J. Markin, Vice-Chairman.... | 320 N. Clark St., Chicago, IL 60610 |
| Thomas E. Gray, Secretary..... | Commission on Chicago Landmarks, Rm. 51 |
| John W. Baird..... | 320 N. Clark St., Chicago, IL 60610 |
| Josue Gonzalez..... | Commission on Chicago Landmarks, Rm. 51 |
| Amy R. Hecker..... | 320 N. Clark St., Chicago, IL 60610 |
| | Commission on Chicago Landmarks |
| | 320 N. Clark St., Chicago, IL 60610 |
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| | Commission on Chicago Landmarks |
| | 320 N. Clark St., Chicago, IL 60610 |
| | Commission on Chicago Landmarks |
| | 320 N. Clark St., Chicago, IL 60610 |

Dated 19....

..... Clerk of Court

MORGAN M. FINLEY, CLERK IF THE CIRCUIT COURT OF COOK COUNTY

IN THE CIRCUIT COURT
OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

No. 91 CH 7289

INTERNATIONAL COLLEGE OF SURGEONS, a not-for-profit corporation, and UNITED STATES SECTION OF THE INTERNATIONAL COLLEGE OF SURGEONS, a not-for-profit corporation, and ROBIN CONSTRUCTION CORPORATION, a for-profit corporation,

Plaintiffs,

v.

THE CITY OF CHICAGO, a municipal corporation, and its COMMISSION ON CHICAGO LANDMARKS, ITS COMMISSIONERS, PETER C.B. BYNOE, Chairman, IRVING J. MARKIN, Vice-Chairman, THOMAS E. GRAY, Secretary, JOHN W. BAIRD, JOSUE GONZALES, AMY R. HECKER, DAVID R. MOSENA, MARIAN DESPRES, CHARLES THURROW and CHARLES SMITH, and DANIEL W. WEIL, Commissioner of Department of Buildings of the City of Chicago, 1500 LAKE SHORE DRIVE BUILDING CORPORATION, a for-profit corporation, 1448 LAKE SHORE DRIVE BUILDING CORPORATION, a for-profit corporation, and THE NORTH STATE, ASTOR, LAKE SHORE DRIVE ASSOCIATION, a not-for-profit corporation,

Defendants.

COMPLAINT FOR ADMINISTRATIVE REVIEW

Plaintiffs, INTERNATIONAL COLLEGE OF SURGEONS, a not-for-profit corporation, UNITED STATES SECTION OF THE INTERNATIONAL COLLEGE OF SURGEONS, a not-for-profit corporation, and ROBIN

CONSTRUCTION CORPORATION, a for-profit corporation, by their attorneys DANIEL L. HOULIHAN, DANIEL L. HOULIHAN & ASSOCIATES, LTD., and RICHARD J. BRENNAN and TERI LEE FERRO, WINSTON & STRAWN, complain against THE CITY OF CHICAGO, a municipal corporation, and its Administrative Agency, the COMMISSION ON CHICAGO LANDMARKS, and ITS COMMISSIONERS, PETER C.B. BYNOE, Chairman, IRVING J. MARKIN, Vice-Chairman, THOMAS E. GRAY, Secretary, JOHN W. BAIRD, JOSUE GONZALES, AMY R. HECKER, DAVID R. MOSENA, MARIAN DESPRES, and CHARLES SMITH, and DANIEL W. WEIL, Commissioner of Department of Buildings of the City of Chicago, 1500 LAKE SHORE DRIVE BUILDING CORPORATION, a for-profit corporation, 1448 LAKE SHORE DRIVE BUILDING CORPORATION, a for-profit corporation, and THE NORTH STATE, ASTOR, LAKE SHORE DRIVE ASSOCIATION, a not-for-profit corporation, defendants, and allege as follows:

1. Plaintiff, International College of Surgeons is a not-for-profit corporation organized and existing under the laws of the District of Columbia, and Plaintiff, United States Section of the International College of Surgeons is a not-for-profit corporation organized and existing under the laws of the District of Columbia, said Plaintiffs are collectively referred to herein as "the College." The College maintains its principal offices in Chicago, Illinois.

2. Robin Construction Corporation ("Robin") is a corporation licensed and authorized to do business in the State of Illinois, engaged in the real estate development business including the development and the construction of buildings used as multiple family dwellings. By virtue of certain contracts, Robin is a contract purchaser and principal developer of the Subject Property described in paragraph 9 hereof.

3. Defendant, The City of Chicago, is a municipal corporation organized and operating pursuant to the laws of Illinois in the County of Cook, which by an ordinance adopted by the City Council of Chicago on March 11, 1987, hereinafter referred to as the "Landmarks Ordinance" (Municipal Code of Chicago, Chapter 21, Sections 21-62 through 21-95), created and constituted the defendant the Commission on Chicago Landmarks (the "Commission") as an administrative agency authorized to make final decisions within the meaning of the Administrative Review Act (Ill.Rev.Stat. 1990, Ch. 110, ¶¶ 3-101, *et seq.*).

4. Defendant, Peter C.B. Bynoe, is the Chairman of the Commission, and the defendants, Irving J. Markin, Thomas E. Gray, John W. Baird, Josue Gonzales, Amy R. Hecker, David R. Mosena, Marian Despres, Charles Thurow and Charles Smith, are all of the other Commissioners of the Commission, all of whom acted together as the Commission.

5. Defendant, Daniel W. Weil, is the Commissioner of Department of Buildings of the City of Chicago, and is designated by the Municipal Code of Chicago as the official responsible for the issuance of demolition and building permits.

6. Defendant, 1500 Lake Shore Drive Building Corporation, is a for-profit corporation organized and existing under the laws of the State of Illinois, which was granted "Party Status" by the Commission at a public hearing on March 5, 1991, concerning the application for an economic hardship exception which is the subject of this proceeding.

7. Defendant, 1448 Lake Shore Drive Building Corporation, is a for-profit corporation organized and existing under the laws of the State of Illinois, which was granted "Party Status" by the Commission at a public hearing on March 5, 1991, concerning the Application for an eco-

nomic hardship exception which is the subject of this proceeding.

8. Defendant, The North State, Astor, Lake Shore Drive Association, is a not-for-profit corporation organized and existing under the laws of the State of Illinois, which was granted "Party Status" by the Commission at a public hearing on March 15, 1991, concerning the Application for economic hardship exception which is the subject of this proceeding. The Defendants granted Party Status are collectively referred to herein as "Interested Parties."

9. Plaintiffs, the College, are the owners, as tenants-in-common, of two parcels of real estate situated in the City of Chicago commonly known as 1516-1524 North Lake Shore Drive, Chicago, Cook County, Illinois (the "Subject Property"). The Subject Property is improved with two buildings which the College has owned for more than 40 years, and in which the College operates its administrative headquarters and a public museum, the International Museum of Surgical Science and Hall of Fame ("Museum").

10. After months of negotiations, in February 1989, the College entered into a contract for the sale and redevelopment of the Subject Property (the "Contract") pursuant to which the College will receive a purchase price of \$17 million, subject to certain adjustments.

11. On June 28, 1989, the City Council of the City of Chicago, pursuant to the recommendation of the defendant Commission, enacted a designation ordinance known as "The Seven Houses on Lake Shore Drive District Ordinance" (the "Designation Ordinance") wherein it designated the Subject Property and five other parcels as a Landmark District, referred to herein as the "Seven House District." Such action was taken pursuant to the Landmarks Ordinance. The inclusion of the Subject Property within the Seven House District was made over the objection of the College.

12. On or about October 5, 1990, Plaintiffs caused to be filed with the City of Chicago, Department of Buildings, four demolition permit applications, which applications sought permits for the demolition of certain portions of the rear of the two main buildings and the coach houses now existing on the Subject Property as part of Plaintiffs' redevelopment plan for the Subject Property. Pursuant to the provisions of the Landmarks Ordinance, the Department of Buildings referred the demolition applications to the Commission on October 10, 1990.

13. On October 23, 1990, the Commission pursuant to Section 21-79 of the Landmarks Ordinance, made a preliminary decision that the demolition of portions of the subject buildings would adversely affect or destroy a significant historical and architectural feature of the improvements in the Seven House District, and issued its preliminary decision disapproving the applications for demolition permits.

14. On November 6, 1990, pursuant to Plaintiffs' request under Section 21-82 of the Landmarks Ordinance, the Commission held an informal conference with Plaintiffs. At the informal conference, the Commission ruled that Plaintiffs' plans for the redevelopment of the Subject Property were not material to its consideration of the demolition permits and that it would not consider any evidence pertaining to the redevelopment. As a result of the Commission's refusal to consider or review Plaintiffs' proposed redevelopment plan, the Commission and Plaintiffs were unable to reach an accord as provided for in Section 21-82 at the informal conference or at any time thereafter.

15. On December 18, 1990, a public hearing was held pursuant to Section 21-83 of the Landmarks Ordinance at which Plaintiffs offered evidence to prove that Plaintiffs' redevelopment plan, including the demolition permits, should be approved and issued.

16. On January 9, 1991, the Commission rendered a final administrative decision disapproving Plaintiffs' Applications for four demolition permits.

17. Thereafter, Plaintiffs filed their Complaint for Administrative Review in the Circuit Court of Cook County, Illinois in a cause entitled, "International College of Surgeons et al. v. The City of Chicago, et al.", No. 91 CH 1361, which cause was removed by the defendants to the United States District Court for the Northern District of Illinois, Eastern Division, as Cause No. 90 C 1587, where said cause is pending, subject to that Court's ruling on the Plaintiffs' Motion to Remand the cause to the Circuit Court of Cook County.

18. The Landmarks Ordinance provides an owner whose permit application has been denied the opportunity to apply to the Commission for an economic hardship exception. The Ordinance specifically provides as follows:

Upon final notification from the Commission of its decision to deny an application for a permit to construct, alter, add to, demolish or relocate property given a preliminary determination of landmark status or designated a 'Chicago Landmark,' the applicant may within thirty (30) days apply to the Commission for an economic hardship exception on the basis that the denial of permit will result in the loss of all reasonable and beneficial use of or return from the property. The Commission shall develop regulations that describe factors, evidence, and testimony that will be considered by the Commission in making its determination.

Landmarks Ordinance § 21-86.

19. On February 8, 1991, Plaintiffs filed with the Commission their Application for Economic Hardship Exception ("Application").

20. Thereafter, pursuant to the Landmarks Ordinance, public hearings were held before the Commission on March 5 and 7 and May 7 and 8, 1991, at which time Plaintiffs offered evidence to prove that they were entitled to an economic hardship exception as permitted by Section 21-86 of the Landmarks Ordinance, and the Interested Parties offered evidence in opposition thereto.

21. On July 3, 1991, the Commission rendered its final administrative decision entitled, "Report of Findings Regarding Docket No. 91-2: The Application for Economic Hardship for 1516 and 1524 North Lake Shore Drive, Part of the SEVEN HOUSES ON LAKE SHORE DRIVE DISTRICT, a Designated Chicago Landmark". A true and correct copy of said Report, marked Exhibit A, is attached hereto and made a part hereof and is hereafter referred to as the "Decision".

22. The Decision adversely affects the legal rights and privileges of the Plaintiffs, and terminated the proceedings before the Commission.

23. Judicial review of the Decision is sought because the Decision is erroneous, illegal and void for one or more of the following reasons:

- a. The Landmarks Ordinance is invalid on its face as it contravenes and violates the Fourteenth Amendment of the Constitution of the United States, which provides that no State shall deprive any person of life, liberty or property without due process of law.
- b. The Landmarks Ordinance is invalid on its face as it contravenes and violates the Fourteenth Amendment to the Constitution of the United States, which provides that no State shall deny to any person equal protection of the laws.
- c. The Landmarks Ordinance is invalid on its face as it contravenes and violates the Fifth and Fourteenth Amendments of the Constitution of the

United States, which provide that private property shall not be taken for public use without just compensation.

- d. The Landmarks Ordinance is invalid on its face as it contravenes and violates Section 2 of Article 1 of the Constitution of the State of Illinois, which provides that no person shall be deprived of life, liberty or property without due process of law nor denied equal protection of the law.
- e. The Landmarks Ordinance is invalid on its face as it contravenes and violates Section 13 of Article 1 of the Constitution of the State of Illinois, which prohibits the taking or damaging of private property for public use without just compensation.
- f. The Landmarks Ordinance is invalid as applied to the Subject Property as it deprives the Plaintiffs of their property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States.
- g. The Landmarks Ordinance is invalid as applied to the Subject Property as it deprives the Plaintiffs equal protection of the laws in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.
- h. The Landmarks Ordinance is invalid as applied to the Subject Property as it effects a taking of private property for public use without just compensation in violation of the Fourteenth and Fifteenth Amendments of the Constitution of the United States.
- i. The Landmarks Ordinance is invalid as applied to the Subject Property as it deprives the Plaintiffs of their property without due process of law or equal protection of the law in violation of Section 2 of Article 1 of the Constitution of the State of Illinois.

- j. The Landmarks Ordinance is invalid as applied to the Subject Property as it constitutes a taking of Plaintiffs' property for public use without just compensation in violation of Section 13 of Article 1 of the Constitution of the State of Illinois.
- k. The Landmarks Ordinance, upon which the Decision is predicated, is unconstitutional on its face in that in violation of the due process provisions of the Constitution of the State of Illinois and the Constitution of the United States, it establishes as a standard for determining economic hardship that the applicant must prove "that the denial of the permit will result in the loss of all reasonable and beneficial use of or return from the property." (Landmarks Ordinance § 21-86). This standard is, on its face, confiscatory and constitutes confiscatory special legislation, in that it deprives owners of property that has been designated as a landmark from enjoying or receiving the fair market value of their property without just compensation in violation of the taking provisions of Section 2 of Article 1 of the Constitution of the State of Illinois and the Fifth Amendment and Fourteenth Amendments to the Constitution of the United States.
- l. The Landmarks Ordinance is unconstitutional on its face in that in violation of the Constitution of the State of Illinois, it delegates to the Commission the power to grant an economic hardship exception without providing legally sufficient criteria to be applied by the Commission in granting or denying such applications. Specifically, Section 21-86 of the Landmarks Ordinance purports to authorize and delegate to the Commission the legislative power to approve economic hardship exceptions without providing legally sufficient criteria to be applied by the Commission in determining whether to approve such applications, and without reserv-

ing to the legislative body, the Chicago City Council, the right and power to make a final decision with respect thereto.

- m. The Commission's Decision to deny the Application for Economic Hardship is unconstitutional in that it prevents the Plaintiffs from implementing and perfecting their long term plan to use the funds produced by the sale and development of the Subject Property to carry out the College's mission and purposes. The Decision deprives the College of its reasonable expectation that it would receive the economic return attributable to the appreciation in the value of the Subject Property, and therefore takes the property of the Plaintiffs without compensation in violation of the taking provisions of Section 2 of Article 1 of the Constitution of the State of Illinois and the Fifth Amendment and the Fourteenth Amendment to the Constitution of the United States.
- n. The Commission's Decision is arbitrary, capricious and illegal in that it is predicated upon criteria contained in its Rules and Regulations which were neither authorized nor approved by the Landmarks Ordinance, nor by the City Council.
- o. The Commission's Decision is arbitrary, capricious and illegal in that it imposes on Plaintiffs the burden of proving economic hardship by clear and convincing evidence a standard contained in the Rules and Regulations, which was neither authorized nor approved by the Landmarks Ordinance, nor by the City Council, and is a standard exceeding that which is applicable to civil proceedings.
- p. The Commission's Decision is arbitrary, capricious and illegal in that the criteria applied by the Commission from its Rules and Regulations is unconstitutionally vague and indefinite.

- q. The Commission's Decision is arbitrary, capricious and illegal in that it applied criteria in denying the Application for Economic Hardship, which is neither contained in the Landmarks Ordinance nor the Commission's Rules and Regulations.
- r. The Commission's Decision is arbitrary, capricious and illegal and against the manifest weight of the evidence in that it finds that the denial of the demolition permit applications does not deny the Plaintiffs of all reasonable and beneficial use of the properties. The five reasons stated by the Commission in support of such finding are each arbitrary, capricious and illegal and contrary to the manifest weight of the evidence.
- s. The Commission's Decision is arbitrary, capricious and illegal and against the manifest weight of the evidence when it finds that the denial of the demolition permit application does not deny the Plaintiffs of all reasonable and beneficial return from the properties. The five reasons stated by the Commission in support of such finding are each arbitrary, capricious and illegal and contrary to the manifest weight of the evidence.
- t. The Commission's Decision is arbitrary, capricious, and illegal and contrary to the manifest weight of the evidence in that the denial of the application not only prevents the College from going forward with the Proposed Development, but it prevents the College from its continued use of the Subject Property because the Subject Property is alleged by the City of Chicago to be in violation of the Building Code of the City of Chicago.
- u. The Decision is contrary to the manifest weight of the evidence and is not supported by substantial evidence.

- v. The Commission failed to make legally sufficient Findings of Fact necessary to support the Decision.
- w. In denying the Plaintiffs' request for an economic hardship exception, the Commission acted arbitrarily in clear abuse of its discretion.

24. Pursuant to Section 3-108 of the Code of Civil Procedure, Plaintiffs demand that the entire transcript of evidence taken at the public hearings held on March 5 and 7 and May 7 and 8, 1991, including all exhibits and the Commission's transcript and minutes of its meeting held on July 3, 1991, be filed by Defendant Commission as part of the record in this case.

WHEREFORE, Plaintiffs request that the Court:

1. Review the Decision of the Commission on Chicago Landmarks rendered on July 3, 1991, and the record of the public hearing held on March 5 and 6 and May 7 and 8, 1991, culminating in the Decision;
2. Find and declare that the Landmarks Ordinance is unconstitutional on its face;
3. Find and declare that the Landmarks Ordinance and the Designation Ordinance as applied to the Subject Property are unconstitutional;
4. Find and declare that the Commission's failure to grant Plaintiffs' application for an economic hardship application and approve their proposed plan for redevelopment of the Subject Property be declared arbitrary, capricious and illegal, and find that Plaintiffs should be authorized to proceed with the demolition of the structures described in the demolition permits and permitted to proceed with their proposed plan for redevelopment;
5. Find and declare that the Decision of the Commission is void; and that the provisions of the Designation Ordinance as they pertain to the Subject Property are void and of no force and effect;

6. Find and declare that the Decision be reversed and held for naught;

7. Find and declare that the demolition permits requested by Plaintiffs be issued forthwith; and

8. That the Court grant such other and further relief which the Court deems lawful and proper.

Respectfully submitted,

INTERNATIONAL COLLEGE OF SURGEONS,
UNITED STATES SECTION OF THE
INTERNATIONAL COLLEGE OF SURGEONS,
and ROBIN CONSTRUCTION CORPORATION

By /s/ Richard J. Brennan
One of its Attorneys

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COMMISSION ON CHICAGO LANDMARKS

Peter C. B. Bynoe, Chairman

 Report of Findings Regarding
Docket No. 91-2:

The Application for an Economic Hardship Exception
for 1516 and 1524 North Lake Shore Drive,
Part of the SEVEN HOUSES ON
LAKE SHORE DRIVE DISTRICT,
a Designated Chicago Landmark.

CITY OF CHICAGO

Richard M. Daley, Mayor

COMMISSION ON CHICAGO LANDMARKS

Report of Findings Regarding

Docket No. 91-2:

The Application for an Economic Hardship Exception
for 1516 and 1524 North Lake Shore Drive,
Part of the SEVEN HOUSES ON
LAKE SHORE DRIVE DISTRICT,
a Designated Chicago Landmark.

The City of Chicago ordinance governing the establishment, goals, purposes, and procedures of the Commission on Chicago Landmarks (the "Commission") is contained in Chapter 21, Sections 21-62 through 21-95 (the "Landmarks Ordinance") of the Municipal Code of Chicago. (In June of 1990, the Municipal Code of Chicago was renumbered and these sections are now Chapter 1-120, Sections 1-120-580 through 1-120-920. However, since most of the Landmarks Ordinance citations that follow relate to actions and documents that predate the June, 1990, re-numbering, the previous chapter and section citation numbers will be used) Section 21-65 of the Landmarks Ordinance empowers the Commission "to adopt, publish, and make available rules of procedure and other regulations for the conduct of Commission meetings, hearings, and other business." The Rules and Regulations of the Commission on Chicago Landmarks (the "Rules and Regulations") were adopted by the Commission on July 1, 1987, with technical amendments on December 5, 1990.

As directed by Section 21-88 of the Landmarks Ordinance, the Commission on Chicago Landmarks is issuing this report of its findings on an application for an economic hardship exception for the structures at 1516 and 1524 North Lake Shore Drive (the "Properties"), located within the SEVEN HOUSES ON LAKE SHORE DRIVE DISTRICT, a designated Chicago Landmark. This application was filed by the owners of the Properties, the International College of Surgeons and the United States Section of the International College of Surgeons (collectively, "College of Surgeons" or "Applicant"). The application followed the Commission's disapproval of four applications for permits to demolish parts of the Properties.

Following a careful consideration of the evidence and testimony presented in support of and in opposition to the application for economic hardship exception, the Commission finds that the denial of the four permits to demolish portions of the structures located at 1516 and 1524 North Lake Shore Drive does not result in "the loss of all reasonable and beneficial use of or return from the property," which is the standard set forth in Section 21-86 of the Landmarks Ordinance.

BACKGROUND

A. Landmark Designation Procedure

Landmark designation is the process, defined in Sections 21-66 through 21-73 of the Landmarks Ordinance, by which areas, districts, places, buildings, structures, works of art, and other objects are considered by the Commission and recommended to the City Council for designation as Chicago Landmarks.

Section 21-66 of the Landmarks Ordinance, which describes the reasons for a landmark designation and preservation program in Chicago, contains ten specific statements of purpose. The first two of these are:

1. To identify, preserve, protect, enhance, and encourage the continued utilization and the rehabili-

tation of such areas, districts, places, buildings, structures, works of art, and other objects having a special historical, community, architectural, or aesthetic interest or value to the City of Chicago and its citizens;

2. To safeguard the City of Chicago's historic and cultural heritage, as embodied and reflected in such areas, districts, places, buildings, structures, works of art, and other objects determined eligible for designation by ordinance as "Chicago Landmarks". . . .

The earliest formal consideration of possible landmark status for a SEVEN HOUSES ON LAKE SHORE DRIVE DISTRICT began when such a district was included in the Commission's 1988 Work Plan, unanimously adopted by the Commission on February 3, 1988. The district was defined to include four properties in the 1200 block and three properties in the 1500 block of North Lake Shore Drive. On June 1, 1988, the Commission received from its staff a report titled *SEVEN HOUSES ON LAKE SHORE DRIVE: A District Composed of 1250, 1254, 1258, 1260, 1516, 1524 and 1530 North Lake Shore Drive, Chicago, Illinois*, and an accompanying statement of the landmark criteria, contained in Section 21-66 of the Landmarks Ordinance, that the staff believed such a district fulfilled.

At its regular meeting on July 6, 1988, the Commission, by unanimous vote, adopted a resolution making a preliminary determination that the SEVEN HOUSES ON LAKE SHORE DRIVE DISTRICT met one or more of the criteria for landmark designation. After this preliminary determination, the Commission followed the procedure specified in Sections 21-68 through 21-71 of the Landmarks Ordinance relating to the designation process for proposed landmarks, including obtaining a report from the Commissioner of Planning, notifying all owners, and holding a public hearing.

At the conclusion of this process, the Commission voted on May 3, 1989 to recommend designation of the SEVEN HOUSES ON LAKE SHORE DRIVE DISTRICT to the City Council of Chicago. The Commission's recommendation document proposed that the district met six of the seven criteria of the Landmarks Ordinance. These criteria, as related to a landmark recommendation, are:

1. Its value as an example of the architectural, cultural, economic, social, or other aspect of the heritage of the City of Chicago, State of Illinois, or the United States.

3. Its identification with a person or persons who significantly contributed to the architectural, cultural, economic, historic, social, or other aspect of the development of the City of Chicago, State of Illinois, or the United States.

4. Its exemplification of an architectural type or style distinguished by innovation, rarity, uniqueness, or overall quality of design, detail, materials, or craftsmanship.

5. Its identification as the work of an architect, designer, engineer, or builder whose individual work is significant in the history or development of the City of Chicago, the State of Illinois, or the United States.

6. Its representation of an architectural, cultural, economic, historic, social, or other theme expressed through distinctive areas, districts, places, buildings, structures, works of art, or other objects that may or may not be contiguous.

7. Its unique location or distinctive physical appearance or presence representing an established and familiar visual feature of a neighborhood, community, or the City of Chicago.

The document further recommended that:

In the SEVEN HOUSES ON LAKE SHORE DRIVE DISTRICT, the critical features that make an essential contribution to the qualities and characteristics by which the district meets six of the seven criteria for landmark designation are: all the exterior faces of all the structures and all the streetscapes within the boundaries defined. . . . Building interiors are not considered critical features of this district.

Use of the term "critical features" was supplanted by the term "significant historical or architectural features" in a December 5, 1990, technical amendment to the Commission's Rules and Regulations. The introduction to Article III of those Rules and Regulations defines this term:

A significant historical or architectural feature shall be any part, portion, or whole of a building or district that makes an essential contribution to those qualities and characteristics by which the building or district meets one or more of the criteria for designation.

The City Council Committee on Historical Landmark Preservation held a public hearing on the proposed designation on May 18, 1989, and voted to concur in the Commission's recommendation. On June 28, 1989, the City Council adopted an ordinance designating the SEVEN HOUSES ON LAKE SHORE DRIVE DISTRICT as a Chicago Landmark. The designation ordinance specified that the district met all of the criteria that had been found applicable by the Commission, and defined the critical features (now called significant historical or architectural features) as had been recommended by the Commission.

B. Permit Review Process

The method by which the Commission reviews permit applications for alteration, construction, reconstruction, erection, demolition, relocation, or other work affecting

designated landmarks is defined in Sections 21-77 through 21-84 of the Landmarks Ordinance.

Point (5) of Section 21-65, the "Powers and Duties" section of the Landmarks Ordinance, specifically directs the Commission:

To review permit applications for alteration, construction, erection, demolition, relocation, or work of any kind affecting landmarks and structures or unimproved sites in landmark districts and to require the presentation of such plans, drawings, elevations, and other information as may be necessary to review those applications.

On October 10, 1990, the Commission received from the Department of Buildings of the City of Chicago four demolition permit applications, filed on behalf of the College of Surgeons, seeking approval to demolish the rear portions and the coach houses of the College of Surgeons' Properties at 1516 and 1524 North Lake Shore Drive in order to accommodate a proposed redevelopment on the site.

The Commission, by unanimous vote at an October 23, 1990, public meeting, issued a preliminary disapproval of the applications for demolition permits, as provided by Section 21-79 of the Landmarks Ordinance. The procedure the Commission then followed, defined in Sections 21-81 through 21-84 of the Landmarks Ordinance, included an informal conference with the Applicant and a public hearing on the proposed demolitions. At the conclusion of this process, the Commission, at a public meeting on January 9, 1991, voted to issue a final administrative decision to disapprove the applications and issued a written decision that contained its findings of fact on the matter. The conclusion of that report stated:

The Commission on Chicago Landmarks finds that the Properties proposed for demolition contribute to the character of the SEVEN HOUSES ON LAKE SHORE DRIVE DISTRICT, and that the proposed

demolitions will adversely affect and destroy significant historical and architectural features of the improvements and district, the destruction of which would be inappropriate and inconsistent with the designation of the SEVEN HOUSES ON LAKE SHORE DRIVE DISTRICT and would not be in accord with the spirit and purposes of this landmark ordinance. Therefore, the Commission on Chicago Landmarks disapproves the four permits to demolish portions of the Properties located at 1516 and 1524 North Lake Shore Drive. This decision is the Commission's final decision on these permit applications submitted for review on behalf of the International College of Surgeons, October 10, 1990.

C. Economic Hardship Application

The Landmarks Ordinance, Sections 21-86 through 21-89, provides an opportunity for an owner whose permit application has been denied to seek the Commission's evaluation of whether or not the denial results in the loss of all reasonable and beneficial use of or return from the property. Section 21-86 of the Landmarks Ordinance states that:

Upon final notification from the Commission of its decision to deny an application for a permit to construct, reconstruct, alter, add to, demolish, or relocate property given a preliminary determination of landmark status or designated a "Chicago Landmark," the applicant may within thirty (30) days apply to the Commission for an economic hardship exception on the basis that the denial of permit will result in the loss of all reasonable and beneficial use of or return from the property. The Commission shall develop regulations that describe factors, evidence, and testimony that will be considered by the Commission in making its determination.

On February 8, 1991, the College of Surgeons filed with the Commission an application for an economic

hardship exception for 1516 and 1524 North Lake Shore Drive.

As directed by Section 21-87, the Commission scheduled a public hearing on the application for an economic hardship exception for March 5, 1991. Public hearings of the Commission "shall provide a reasonable opportunity for all interested persons to present testimony of evidence under such rules as the Commission may adopt governing the proceedings of a hearing." (Landmarks Ordinance, Section 21-71.)

PUBLIC HEARING

A. Statements, Testimony, Evidence, and Exhibits

The hearing was convened on March 5, 1991. Section 21-71 of the Landmarks Ordinance, as well as Paragraphs (A) through (D) of Article II of the Commission's Rules and Regulations define the eligibility and rights of persons, organizations, or other legal entities to file requests to become parties to a public hearing proceedings held by the Commission.

As legal counsel on behalf of the College of Surgeons, appearances were filed by Daniel L. Houlihan of the law firm of Daniel L. Houlihan & Associates, Ltd. and Richard J. Brennan of the law firm of Winston & Strawn.

The 1448 North Lake Shore Drive Building Corporation and the 1500 North Lake Shore Drive Corporation, cooperative apartment buildings neighboring the site in question, filed for and were granted party status. Legal counsel for both of these entities were Thomas Z. Hayward, Jr. and Matthew Phillips of the law firm of Bell, Boyd & Lloyd.

The North State, Astor, Lake Shore Drive Association, a community organization, filed for and was granted party status. Legal counsel for this organization was attorney Thomas J. Murphy.

Since the 1448 North Lake Shore Drive Building Corporation; the 1500 Lake Shore Drive Building Corporation; and the North State, Astor, Lake Shore Drive Association were granted party status in opposition to the application for economic hardship exception, they will be collectively referred to as the "Interested Parties."

Additional sessions of the public hearing were held on March 7, May 7, and the hearing concluded on May 8, 1991. During the course of the hearing, twelve exhibits were introduced by the Commission, ninety-eight exhibits were submitted by the Applicant, and thirteen exhibits were submitted collectively by the Interested Parties. These exhibits, as well as the transcripts of the entire proceeding, are available for inspection at the office of the Commission.

On March 5, 1991, testimony was presented and exhibits were offered by the following experts in support of the application for economic hardship exception:

Alvin Edelman, attorney; general counsel to the College of Surgeons

Walker C. Johnson, architect with the firm of Holabird & Root Architects

Brian Morgan, project manager and cost estimator; Principal with the firm of Morgan Construction Consultants, Incorporated

On March 7, 1991, testimony was presented and exhibits were offered by the following experts in support of the application for economic hardship exception:

John Lahey, architect; Partner in the firm of Solomon Cordwell Buenz

John S. P. Lumley, surgeon; World President of the International College of Surgeons

Pedro A. Rubio, surgeon; President of the United States Section of the International College of Surgeons

William A. McCann, real estate broker, and consultant; President of William A. McCann & Associates, Inc.

Neil King, real estate broker, appraiser, and consultant; President of Armond D. King, Inc.

On May 7, 1991, statements were offered by six people representing organizations or other entities in opposition to the application for economic hardship exception:

Paul Krauss, representing the Board of Directors of the 1500 Lake Shore Drive Building Corporation

Barry McNamara, representing 1550 North Lake Shore Drive Condominium Association

Edwin Eisendrath, Alderman of the 43rd Ward

Mary Lou Maher, representing the Zoning Committee of the North State, Astor, Lake Shore Drive Association

Linda Sandels, representing the 1515 North Astor Condominium Association

Richard Needham, representing the Board of Directors of the 1448 Lake Shore Drive Building Corporation

In addition, 41 individuals offered statements in opposition to the application for economic hardship exception.

A written statement from Theodore Hild, Deputy State Historic Preservation Officer, Illinois Historic Preservation Agency, explaining State of Illinois preservation incentive programs that could be available to the Applicant, was entered into the record.

On this same date, testimony was presented and exhibits were offered by the following experts in opposition to the application for economic hardship exception:

Carol Wyant, Executive Director of the Landmarks Preservation Council of Illinois

John C. York, President of the investment banking firm of Robert E. Lend Company

Patricia L. Miller, Executive Director of the Illinois Heritage Association

Stephen J. Kelley, architect and structural engineer with the firm of Wiss, Jenney, Elstner Associates, Inc.

John Vinci, architect; Principal in the firm of John Vinci, Inc.

Gary J. W. Mardon, construction cost consultant; Senior Vice President of the Chicago office of Hanscomb Associates, Inc.

Jared B. Shlaes, real estate appraiser and consultant; Director of Special Real Estate Services of Arthur Andersen & Co.

The May 8, 1991, session of the public hearing consisted of cross examination of Mr. Shlaes and rebuttal testimony presented by Mr. Edelman and Mr. McCann. At the conclusion of the hearing on May 8, it was stated that any additional written material, such as rebuttals, summary briefs, or memoranda, would be received from Applicant's and Interested Parties' attorneys until May 23, 1991. This date was subsequently extended to June 3, 1991. Memoranda from both the Applicant's attorneys and the Interested Parties' attorneys were received on June 3, 1991.

At the request of the Commission, site visits to the Properties were made by Commission and staff members on April 15, and May 6, 1991.

Copies of transcripts of the public hearing and copies of the post-hearing memoranda were provided to all Commission members. In addition, copies of any exhibits requested by Commission members were provided to them. Due to the timetable set forth in Section 21-88 of the Landmarks Ordinance, the Commission was required, by

July 9, 1991, to determine whether denial of the permits denied the Applicant all reasonable and beneficial use of and return from the Properties.

B. Factors in the Commission's Consideration

Article V, Section A. "Evidence of Economic Hardship," of the Commission's Rules and Regulations contains a comprehensive list of factors, evidence, and testimony that shall be submitted by an applicant at a public hearing on an application for an economic hardship exception. These required factors, evidence, and testimony are:

1. The applicant's knowledge of the landmark designation at the time of acquisition, or whether the property was designated subsequent to acquisition.

2. The current level of economic return on the property as considered in relation to the following:

a) The amount paid for the property, the date of purchase, and party from whom purchased, including a description of the relationship, if any, between the owner of record or applicant and the person from whom the property was purchased and terms of financing between seller and buyer.

b) The annual gross and net income from the property for the previous three years; itemized operating and maintenance expenses for the previous three years; and depreciation deduction and annual cash flow before and after debt service, if any, during the same period.

c) Remaining balance on any mortgage or other financing secured by the property and annual debt service, if any, during the prior three years.

d) Real-estate taxes for the previous four years and assessed value of the property according to the two most recent assessed valuations.

e) All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing, or ownership of the property.

f) Form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture, or other.

g) Any state or federal income tax returns on or relating to the property for the last two years.

3. Any listing of the property for sale or rent, price asked, and offers received, if any, within the previous two years, including testimony and relevant documents regarding:

a) Any real-estate broker or firm engaged to sell or lease the property.

b) Reasonableness of the price or rent sought by the applicant.

c) Any advertisements placed for the sale or rent of the property.

4. The infeasibility of profitable alternative uses for the property as considered in relation to the following:

a) A report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any structures on the property and their suitability for renovation.

b) Estimate of the cost of the proposed construction, alteration, demolition, or removal, and an estimate of any additional cost that would be

incurred to comply with the recommendation and decision of the Commission issued pursuant to Chapter 21, Section 21-83, of the Municipal Code of Chicago.

c) Estimated market value of the property in the current condition; after completion of the proposed construction, alteration, demolition, or removal; and, in the case of a proposed demolition, after renovation of the existing property for continued use.

d) In the case of a proposed demolition, the testimony of an architect, developer, real-estate consultant, appraiser, or other real-estate professional experienced in rehabilitation as to the economic feasibility of rehabilitation or reuse of the existing structure on the property.

Further, Article V, Section C. "Burden of Proof," of the Rules and Regulations specifies that:

The applicant bears the burden of proof that the existing use of the property is economically infeasible and that the sale, rental, or rehabilitation of the property is not possible, resulting in the property not being capable of earning any reasonable economic return. Proof of economic hardship is not established solely by submission of proof of actual financial loss or lost opportunity to obtain increased return from the property, although these are factors to be considered by the Commission. Proof of economic hardship must be established by clear and convincing evidence.

FINDINGS OF THE COMMISSION

At a Commission meeting on July 3, 1991, the question of whether or not to grant the application for an economic hardship exception was placed before the Commission. It was moved and seconded that:

The Commission on Chicago Landmarks determines that, in the case of the February 8, 1991, application for an economic hardship exception for 1516 and 1524 North Lake Shore Drive, part of the SEVEN HOUSES ON LAKE SHORE DRIVE DISTRICT, denial of the October 10, 1990, applications for demolition permits does not deny the Applicant all reasonable and beneficial use of or return from the Properties. Therefore, the application for an economic hardship exception is disapproved and the Commission issues this report as its final administrative decision.

This motion was adopted by a unanimous vote of the Commission members present. Section 21-88 of the Landmarks Ordinance provides, upon a decision on an application for an economic hardship exception, "The determination shall be accompanied by a report stating the reasons for the decision." The Commission's determination on the purported loss of all reasonable and beneficial use of or return from the Properties was based on assessments of both the questions of *use of* and *return from*, and took into account the entire record, including: 1) the transcript of the four hearing sessions ("Transcript," pages 1 to 867, in four volumes); 2) twelve exhibits entered by the Commission ("Commission Exhibit," Nos. 1-12); 3) ninety-nine exhibits entered by the Applicant ("Applicant Exhibit," Nos. 101-118, 401-433, 440, 501-517, 601-607, 701-705, 801-811, 901-902, 1001-1003); 4) thirteen exhibits entered by the Interested Parties ("Interested Parties Exhibit," Nos. 1-13); 5) the June 3, 1991, "Applicant's Memorandum in Support of Its Application for Economic Hardship Exception" ("Applicant Memorandum"); and 6) the June 3, 1991, "Interested Parties Memorandum in Opposition to Applicant's Request for Exception" ("Interested Parties Memorandum").

Testimony at the public hearing confirmed that the College of Surgeons purchased 1516 North Lake Shore

Drive in 1947 for \$85,000 and 1524 North Lake Shore Drive in 1950 for \$185,000. (Transcript, pages 459-460.) Their intended use was as headquarters for their activities, and they have continued this use up to the present day. This use includes offices in the 1516 building and the location for their International Museum of Surgical Science in the 1524 building. The Applicant owns the Properties free and clear and, as a tax-exempt organization, does not and has never paid real-estate taxes on the Properties. (Transcript, page 89.)

According to testimony of Mr. Edelman (Transcript, pages 29-38.), the College of Surgeons in January of 1988 began discussion of a proposed sale of the Properties. These discussions ultimately resulted in a contract between the College of Surgeons, as seller, and Clark E. Johnson and Erik Moskowitz, as purchasers. This contract was approved by a number of governing bodies of both the United States Section and the International College of Surgeons, and was ratified by the International Board of Governors on October 10, 1989. That ratification was fifteen months after the Commission's preliminary determination of landmark status and nearly four months after the City Council's designation of the SEVEN HOUSES ON LAKE SHORE DRIVE DISTRICT as a Chicago Landmark. This contract provides for: a) demolition of all but the front 40 feet of both the 1516 and 1524 buildings as well as their coach houses; b) construction of a 41-story condominium tower behind these remaining fragments; and c) an option within the development for 20,000 square feet of space for the offices and museum of the College of Surgeons.

A. All Reasonable and Beneficial *Use of the Properties* Has Not Been Lost.

In examining the entire record, the Commission finds that the denial of the demolition permit applications does not deny the Applicant all reasonable and beneficial *use of its Properties* for the following five reasons:

1) *The landmark designation does not inhibit or prevent the Applicant's traditional use of the Properties.*

The Applicant, in the course of the public hearing and in the Applicant Memorandum, does not once question the suitability of the Properties, in their current configuration, for use by the College of Surgeons as its headquarters and museum. Dr. Lumley, referring to the College of Surgeons, states, "... here we are, living in a marvelous site which is ideal[ly] suited to the requirements of the college." (Transcript, pages 263-264.)

Both Dr. Lumley and Dr. Rubio testified at length to the importance of the buildings to their organizations and to their desire and commitment to continue utilizing them. Dr. Lumley said, "And we own these buildings as our own. They are our own heritage. They are in fact something which we are proud of. . . . We realize the true worth of this, these buildings, and we intend to stay." (Transcript, page 263.) Dr. Rubio said, "But I think it is the intent and the desire of both the owners [the U.S. Section and the International College] to, if at all possible, stay in the quarters as they are forever." (Transcript, page 361.)

With particular reference to Chicago landmark designation, the applicant has stated that, "The constraints of this landmark ordinance which defines critical features as being all of the exterior faces of all the structures and all of the streetscapes freezes these properties and, frankly, dooms them." (Transcript, pages 18-19.)

The Commission finds, however, that the Applicant's contention that landmark designation is an impediment is erroneous. While the Applicant's expert witnesses testified that it was their opinion that the restraints of the landmark designation ordinance might hamper one alternative use of the Properties, the proposed redevelopment, no evidence was introduced to show that the landmark status impacts the Applicant's current use of the Properties. As

the Interested Parties Memorandum points out on page 22:

The designating ordinance of the City of Chicago concerns only the exteriors of the Property, *not any of the interior*. The College's forty-plus years of use of the Property has only been conducted in the interior; thus, the landmark status has no impact on the College's use of the Property.

Further, while the Morgan report (Applicant Exhibit No. 402.) may allege that landmark status is obligating the College of Surgeons to bear responsibility for \$7.2 million in repairs to the Properties, there is nothing mandated by landmark designation which requires an owner to maintain property in any manner greater than that provided by the City of Chicago Building Code.

The Commission notes that the Applicant has successfully used its Properties in a traditional manner since it acquired them over forty years ago, and finds no logic in the Applicant's contention that the recent landmark designation in any way deters this use from continuing into the future.

- 2) *The Applicant's poor stewardship may well be the only impediment to the continued use of the Properties.*

Dr. Lumley claims that the structures have deteriorated to a point beyond their financial means to adequately repair and sustain the buildings for future use: "Put we also have the problem that the degeneration or deterioration of the buildings were beginning to become a considerable headache from a financial point of view." (Transcript pages 264.)

The Applicant, in testimony and in its memorandum, acknowledges a policy of deferred maintenance. Dr. Lumley testified that "... the members themselves think that their finances should go towards surgery and not maintenance of the building."

(Transcript, page 300.) In regard to this maintenance policy, he states, "We try and be as cheap as possible." (Transcript, page 316.) Dr. Rubio testified similarly. The Commission's site inspection of the Properties confirmed this policy of deferred maintenance; the buildings' systems (heating, electrical, plumbing, etc.), for instance, are original to the structures and are approaching eighty years of service.

The Applicant Memorandum further draws attention to this deferred maintenance by stating, "The record is also undisputed that these two buildings were built at the turn of the century; that they have not had any major improvements to their principal building systems; that they are in immediate need of substantial repairs." That the College of Surgeons has shamefully neglected these buildings, while claiming that "... ICS has for many years treated this property as its principal asset. ..." (Applicant Memorandum, page 18.), is further evidenced by their own financial statements that show only the following amounts spent on repairs and maintenance of the Properties: \$38,722 in 1988, \$23,940 in 1989, and \$40,341 in 1990. (Applicant Exhibit Nos. 601-606.) These amounts spent on repairs and maintenance were not detailed further. According to page 4 of the Interested Parties Memorandum:

During those respective years, the College spent \$77,167, \$151,830 and \$107,781 on its annual meeting, \$151,338, \$184,694 and \$243,716 on publishing its annual journal and \$365,931, \$318,019 and \$350,196 on salaries.

Compared to these other expenses, the amounts spent on repairs and maintenance seem disproportionately low. The Applicant has no rent expense, and during each of the last three years has expended roughly \$1 per square foot for repairs and maintenance on its museum and office spaces.

The Commission finds questionable the protestations of Dr. Lumley and Dr. Rubio that the College of Surgeons desires to retain the buildings while at the same time not being able to generate any enthusiasm for the Properties from its membership because, as Dr. Rubio points out, "... physicians don't have as much money as they used to, and they are using it for purposes that are more important than fixing a building." (Transcript, page 351.)

Nevertheless, the Commission notes that owning property does require a minimal level of maintenance even on such finely crafted and well constructed buildings as these Properties. The Commission finds it inconsistent that an organization would systematically allow to deteriorate what it claims to be its "principal asset."

3) *The Properties could be improved by the Applicant for continued use for a reasonable amount of money.*

The Applicant Memorandum states on page 4:

ICS [the College of Surgeons] has neither the assets nor the ability to generate additional revenue to pay for the necessary repairs and replacements, let alone a restoration of the building to its original condition. The record is clear and uncontested that a great many of the ICS members are physicians in other countries; that many of these physicians do not have the income to pay higher dues; that the only revenue available to pay the several million dollars needed to renovate these buildings is dues and voluntary contributions; and that these sources of funds can never be sufficient to pay for the millions of dollars now needed for the buildings.

The Commission, first of all, wishes to differentiate between what are called "necessary repairs and replacements" and what is called "restoration." Landmark designation, in and of itself, does not require a level of maintenance any greater than that mandated by the Building Code of Chicago. In the best of all possible

worlds, landmark owners would have unlimited funds to restore their properties to pristine condition. The Commission recognizes, however, that this is not normally the case, either today or for the foreseeable future, and is not requiring that of the Applicant.

Mr. Johnson, an expert witness for the Applicant (Transcript, page 162.), and two expert witnesses for the Interested Parties, Mr. Kelley (Transcript, page 586.) and Mr. Vinci (Transcript, page 619.), testified that the structures are in good condition. Both Applicant witnesses Mr. Johnson (Transcript, pages 163-164.) and Mr. Morgan (Transcript, page 205.) seem to agree that the exteriors of the Properties could be repaired to a weather tight condition, with these improvements having a life expectancy of 25 to 30 years, by undertaking work that would cost approximately \$480,000.

The Commission acknowledges that at the present time, according to the recent operating statements provided by the College of Surgeons, a "restoration" of the \$7.2 million magnitude estimated by Mr. Morgan is not financially possible. However, this "restoration" is in fact an idealized, comprehensive, museum-quality make over of the Properties; it is not "necessary repairs and replacements." The designation of the SEVEN HOUSES ON LAKE SHORE DRIVE DISTRICT quite specifically relates only to the exteriors of the structures within the district; interior changes are not reviewed, and certainly not dictated, by the Commission.

The Applicant Memorandum further states:

That the amount of immediately needed repair is substantial is demonstrated by the fact that the Interested Parties expert witness, Gary J. W. Mardon of Hanscomb, estimated that the 1524 building alone requires work amounting to \$1,750,000. (Applicant Memorandum, page 5.)

The Commission notes that this estimate by Mr. Hanscomb is not for "immediately needed repair" that

is *required*, but rather for a conjectural consolidation of all the College of Surgeons' functions into the 1524 building; this possible consolidation foresees a first-class renovation to make this structure optimally usable for a museum/office complex.

The Commission's site inspection revealed the buildings to be in good physical condition and structurally sound. The Commission finds that the scope of work, estimated at \$7.2 million and outlined in the "International College of Surgeons, Chicago, Illinois, Order of Magnitude Cost Estimate" (Applicant Exhibit No. 402.), to be excessive considering the good physical condition of the buildings. The report, prepared in 1991, is presented, in part, as a justification for a decision that was made at least three years earlier that rehabilitating the buildings was not economically feasible for the Applicant. The scope of work under the sections "Interior Construction," "Conveying Systems," "Special Construction," and the inclusion of "Furniture and Furnishings," for instance, appear to inflate the costs to prove a point rather than to reach an estimate of reasonable rehabilitation costs. It must be noted again that, while extensive testimony was offered as to the projected expense of interior restoration work, the interiors are not specified by the City Council as significant features in this district designation. Therefore, the Landmarks Ordinance does not require the restoration or even the retention of existing interiors, although the Commission would certainly applaud such voluntary efforts.

4) Several reasonable and feasible alternatives for use of the Properties were outlined.

In presenting its arguments for an economic hardship exception, the Applicant contends that "... there are no reasonable alternatives" (Transcript, page 18.) to the proposed redevelopment of the property.

The Commission finds, however, that there are several reasonable alternatives. The Applicant has apparently

not seriously investigated the reasonable alternative of consolidating its operations into one structure, thus allowing the College of Surgeons to continue at this location. Proceeds of the sale of the other structure might then finance the Applicant's rehabilitation of its headquarters building. The Applicant claims many times in the transcript that the space needs of the College of Surgeons are 20,000 square feet to accommodate both offices and the museum. The Properties, in total, contain approximately 36,000 square feet, which is 16,000 square feet in excess of the often stated requirements. The 1524 property contains over 20,000 square feet in the main building and the coach house. When the hearing officer asked Dr. Lumley whether the Applicant had considered consolidation of operations into one property, he replied, "Well, that would be feasible only that we are actually—we would then lose our museum. And our museum we look on as one of the important aspects of our developments." (Transcript, page 302.) However, the Commission heard no testimony to explain how the present 20,000 square feet in the 1524 property cannot accommodate the same office and museum functions that are envisioned for the 20,000 square feet proposed in the plan for redevelopment.

One readily apparent alternative use for either or both structures would be as a consulate. In fact, a precedent for this use has already been established in the structure at 1530 North Lake Shore Drive (immediately adjacent to and north of 1524 and also part of the SEVEN HOUSES ON LAKE SHORE DRIVE DISTRICT) which houses the headquarters of the Consulate General of the Republic of Poland. While two expert witnesses presented by the College of Surgeons discounted the likelihood of consulate use (Transcript, pages 376-378 and page 422.), further evidence of the desirability of the Applicant's Properties for use as a consulate was provided in an exhibit submitted by the Applicant. Applicant Exhibit No. 115 is a copy of a proposed real-estate sales contract from the

Consulate General of the People's Republic of China in Chicago, dated May 23, 1986, and offering \$5.5 million for the Properties. That offer was subsequently increased to \$6.5 million, but was rejected by the College of Surgeons. An expert witness for the Interested Parties, Ms. Wyant, also testified on the 1989 preliminary interest of the Japanese government in the Properties which, according to Ms. Wyant, was discouraged by the College of Surgeons. (Transcript, page 512.)

The Commission notes that, while a zoning variance might have to be obtained for use of either or both of the houses for a consulate, a track record of cooperation has already been established between the U.S. Department of State's Office of Foreign Missions in Chicago and the City of Chicago. Given too, that the alderman of the 43rd Ward, in which the Properties are located, is on record as being opposed to the proposed redevelopment plan, there is good reason to believe that the City of Chicago would be supportive of a plan that would retain the Properties "as is." It was further noted that, as well as consulates, the Properties would be equally attractive "... to institutional users such as libraries, private clubs, fraternal institutions, philanthropic societies, convents and monast[er]ies, all of which are permitted under existing zoning. Their size and condition allow sufficient flexibility in planning to make such uses feasible without significant interior alteration." (Interested Parties Exhibit No. 12: appraisal report prepared by Arthur Andersen & Co., page 41.) According to Ms. Wyant, interest in such a use as just listed had been expressed by Lawrence Pucci, Chairman of the Wedgewood Society of Chicago. (Transcript, pages 512-513.)

Interested Parties witness Mr. Shlaes testified that a return to solely residential use would be the most desirable use of the Properties from an economic standpoint. His conclusion, found on pages 41-42 of the appraisal report prepared by Arthur Andersen & Co. (Interested Parties Exhibit No. 12.) states:

We therefore conclude that the highest and best use of the property as currently improved was for two single family dwellings or for institutional use as permitted by existing zoning and other legal restrictions, as of May 5, 1991.

A residential buyer would benefit from at least two programs designed to encourage the rehabilitation of landmark buildings: the Cook County property tax freeze [Ill. Rev. Stat., ch. 120, pars. 501j-1 through 501j-8] applicable to landmark rehab outlays and the Federal income tax deduction allowed donors of preservation easements. These and other potential benefits further enhance the appeal of the property as residences.

The appraisal also concluded that, as of May 5, 1991, the fair market value of the Properties is \$6.5 million. That a market may exist for use of the Properties as single-family homes was underscored by the testimony of Mr. Vinci, an architect acknowledged for his expertise in historic preservation. (Transcript, pages 620-622.) Mr. Vinci cited a number of his commissions for de-conversion or reuse of similar structures in the immediate vicinity of the subject Properties. The Arthur Andersen appraisal (Interested Parties Exhibit No. 12.) detailed similar examples.

Applicant's witness Mr. McCann strongly disputed the feasibility of using the Properties as either single-family homes or consulates, characterizing these possibilities as "remote, speculative, and conjectural." (Transcript, pages 841 and 843.) However, when asked if he had done a market value appraisal of the Properties, he indicated that he had not, but had instead done what he termed, "... an evaluation study. It's not an appraisal where I was asked to render an opinion of the market value of the properties, no. . . . I was asked to examine the properties in relation to the economic hardship as imposed by the landmark designation in relation to alternative uses to which the property may be put." (Transcript, page 847.)

The Properties may also present the potential for conversion to luxury condominiums, a use already under way for two houses at 1250 and 1254 North Lake Shore Drive, also in the SEVEN HOUSES ON LAKE SHORE DRIVE DISTRICT. As discussed in the Interested Parties Memorandum (pages 29, 30 and 35.), the developer in those projects, Art Frigo, was able to take advantage of the economic incentives available for landmark-designated property. Whether or not conversion to condominiums may be the best use of the Applicant's Properties in today's economic environment is open to debate. However, some of the same incentives or benefits currently are available to the Applicant, yet apparently have been unexplored. Through a variety of programs administered by the Preservation Services Division of the Illinois Historic Preservation Agency, outlined in the written statement from Mr. Hild, Deputy State Historic Preservation Officer (Interested Parties Exhibit No. 4.), the College of Surgeons, even with their tax-exempt status, could take advantage of certain incentives and benefits for the preservation and rehabilitation of their designated Properties. The testimony of Mr. York also discussed possible ways the College of Surgeons could benefit from the donation of a preservation easement on their property. (Transcript, pages 540-549.)

- 5) *The Applicant appears to have ignored or not fully explored a number of potentially viable sources of revenue to allow continued use of the Properties.*

Mr. Houlihan, in his public hearing opening statement on behalf of the Applicant, contends that. "The ICS cannot afford to maintain these buildings in a manner consistent with the original design construction and at the same time sustain and improve its world wide mission, which is its primary duty to its members and the public at large." (Transcript, page 16.) The Applicant Memorandum, page 5, further contends that "... neither the offices nor the museum generate any income for the ICS,

nor have they any prospects of generating sufficient income to pay for the needed work."

The Commission finds, however, that the Applicant has ignored or left unexplored a number of potentially viable revenue sources. While the College of Surgeons currently has approximately 16,000 square feet more than its stated needs of 20,000 square feet, the organization has never rented, and made no claims to have ever tried to rent, any part of its Properties as a mechanism to produce income to help satisfy its stated revenue needs. Consolidation of the Applicant's uses into one structure, possibly the 1524 building and coach house which have at least 20,000 square feet, would free up the other structure for an alternative use either through lease or sale to generate income and pay for needed repairs. The appraised value of the 1516 building is \$3.1 million.

The College of Surgeons has ignored a demonstrable source of financial aid—that of volunteer fund raising. Mr. Krauss, representing the Board of Directors of the 1500 North Lake Shore Drive Building Corporation, stated at the hearing:

In 1988 the president of this building corporation met with various corporate heads and dignitaries of the applicants. They stated a need of approximately one million dollars for repairs and renovations to the Properties.

Our president volunteered to aid in fund raising for the Applicants for that purpose. Two weeks later the applicants revised their needs to three million. Now the applicants state a need of seven million. Whatever their true needs, the applicants chose not to take advantage of the volunteered fund-raising assistance. (Transcript, page 468.)

This point was underscored by the statement of Alderman Eisendrath who indicated that:

In fact, the neighbors have said they'd be willing to do some fund raising to make these buildings

whole again, to protect the integrity of this landmark district. That offer has fallen on deaf ears. (Transcript, page 474.)

Part of the quoted \$7.2 million the Applicant claims to need for restoration would go into upgrading its International Museum of Surgical Science, yet the College of Surgeons has left untapped several potential sources of income for the museum. That the museum is an important part of the mission of the College of Surgeons was borne out by the testimony of Dr. Lumley, who said "... this little gem, which is well over 12,000 square feet of our present activities, is a unique part of our property. . . . And this is unique [in] that [there are] very few around the world which are purely dedicated to this." (Transcript, page 257.) He continued to attest to the importance of the museum, saying:

And this, of course, is open to the public. It's free. We do not charge anything, and it's one of the most important public links that we have. And it's important to have it around the city of Chicago. And it's open to all students and all schools of children. (Transcript, page 258.)

However, when Dr. Lumley was questioned as to why members of the College of Surgeons were apparently unwilling to provide more contributions for the support, maintenance, and restoration of the building that houses the museum, he did concede that, "I think the college members look on their commitment to surgical development rather than bricks and mortar and maintaining landmarks." (Transcript, page 283.) Dr. Lumley did say, "We have a women's auxiliary which puts in 5, 10, 15, \$20,000 every two or three years." (Transcript, page 305.)

Professional museum consultant Patricia L. Miller, an expert witness called by the Interested Parties, stated, "Many museums have an auxiliary group. They might consider expanding the base of theirs to include people

other than wives of surgeons but people who live in Chicago and other places who are interested in assisting the museum to meet its mission." (Transcript, page 559.) Ms. Miller further suggested that the College of Surgeons apply for grants available from the Medical Museum Association, the Museum Assessment Program of the American Association of Museums, and the National Endowment for the Humanities. (Transcript, page 560.) Ms. Miller's written report (Interested Parties Exhibit No. 5.) contains additional suggestions such as the deaccession of such objects not strictly related to the surgical sciences, charging an entrance fee, and opening a museum store.

A Commission request to allow Ms. Miller to have a formal interview with the museum's curator and director was denied (Commission Exhibit No. 7E.), although she did encounter them informally when she visited the museum as a member of the public. The Applicant's denial of the requested interview by Ms. Miller was based on their view that a museum assessment was not relevant to the economic hardship exception issue. (Transcript, page 567.)

The Commission acknowledges the desire of the College of Surgeons to upgrade and improve their museum facilities. Evidence presented at the hearing indicates that viable sources of funding for this purpose have been offered directly, as well as proposed. Yet no evidence was offered by the Applicant that any additional sources of financial aid had been explored at all. This lack on the part of the Applicant causes the Commission to seriously question their claim that there are no sources of revenue to assist in renovation or repair of the Properties.

B. All Reasonable and Beneficial *Return from the Properties* Has Not Been Lost.

In examining the entire record, the Commission finds that the denial of the demolition permit applications does

not deny the Applicant all reasonable and beneficial return from its Properties for the following five reasons:

- 1) *The contract for the sale of the subject Properties is a single, but not controlling, factor in the Commission's consideration of the economic hardship exception application.*

Under Article V of its Rules and Regulations, the Commission is required to examine a broad range of factors in determining whether an applicant has met its burden to show economic hardship. The article lists four general topics of consideration—an applicant's knowledge of [the] landmarks designation, the current level of economic return, any documentation of attempts to sell or lease the property within the last two years, and the infeasibility of alternative uses—as well as sub-topics outlining specific forms of documentation.

Moreover, the Rules and Regulations are clear as to an applicant's burden:

The applicant bears the burden of proof that the existing use of the property is economically infeasible and that the sale, rental, or rehabilitation of the property is not possible, resulting in the property not being capable of earning any reasonable economic return. Proof of economic hardship is not established solely by submission of proof of actual financial loss or lost opportunity to obtain increased return from the property, although these are factors to be considered by the Commission. Proof of economic hardship must be established by clear and convincing evidence. (Rules and Regulations, Article V, Section C.)

Under this language, it is appropriate for the Commission to investigate what, if any, efforts were made to sell or lease or otherwise use the Properties in a manner consistent with their designation as part of a landmark

district. This information helps the Commission in determining whether the Applicant has truly explored alternative uses from which a reasonable return could be obtained. Conversely, it aids the Commission in determining whether the proposed demolition and redevelopment is the only option for the Properties such that the denial of the demolition permit truly results in an economic hardship.

From the record it is clear that the Applicant has made no attempts to sell, rent, mortgage, or otherwise use the Properties in such a way as to generate a reasonable return. When asked if the Properties had been listed with a broker within the last two years, Mr. Edelman replied that they had not. (Transcript, page 92.) In response to questions regarding whether either of the Properties were leased and whether the Properties carried a mortgage, Mr. Edelman responded in the negative to both questions. (Transcript, page 92.) The Commission believes that these options, if explored, would enable the Applicant to generate funds sufficient to make the necessary repairs to the Properties, as discussed earlier, and to provide additional income from the Properties.

The Applicant offers a sales contract as its sole alternative to the present use of the Properties. This contract, Applicant Exhibit No. 103, is between the Applicant, as seller, and Clark E. Johnson and Erik Moskowitz, as purchasers. Mr. Johnson's interest was subsequently assigned to Robin Construction Corporation by a document, dated August 11, 1989. (Transcript, pages 59-60, and Applicant Exhibit No. 103A.) According to the testimony of Mr. Edelman, negotiations on the contract began in January, 1988, and it was executed by a representative of the seller in February, 1989. The contract was ratified by the seller's International Board of Governors on October 10, 1989. (Transcript, pages 29-34.)

Under the contract, the seller will transfer title of the two Properties to the purchaser for redevelopment as a

41-story highrise condominium building. The contract is contingent on the seller's obtaining all necessary permits and approvals for the redevelopment. According to Mr. Edelman, the purchase price is \$17 million, with adjustments. (Transcript, pages 35-36.) The contract provides that only the front, or east, 40 feet of both the 1516 and 1524 buildings will be retained, while everything else on the lots, being the rear portions of the two main structures and their coach houses, will be razed for the construction of the highrise. (Transcript, page 36.) The seller has an option to acquire up to 20,000 square feet of office space in what would be the remaining portions of the 1516 and 1524 buildings.

Although the contract is certainly a relevant document for the Commission's considerations, the Commission finds it is not the controlling factor in the determination of whether the Applicant has a viable economic hardship exception claim. The Applicant's principal argument is that the denial of demolition permits for the subject Properties would prevent the sale of the Properties under the contract it presently has with Mr. Moskowitz and Robin Construction Corporation. The Commission notes that while refusal to grant the demolition permits may preclude the fulfillment of the present contract, such a circumstance on its own does not satisfy the Applicant's burden under the Rules and Regulations: to show that the sale, rental, or rehabilitation of the property is not possible. (Rules and Regulations, Article V, Section C.) It merely shows that one sale is not possible. To give the disproportionate weight to the contract that the Applicant seeks would effectively preclude the extensive testimony by the Interested Parties on the sale, rental, or rehabilitation alternatives that are outlined in the Rules and Regulations.

It is clear from the Rules and Regulations that the burden on the Applicant in this economic hardship proceeding is to demonstrate that present as well as reasonable, theoretical alternative uses are not feasible, and that in the face of such infeasible uses, there is no reasonable

economic return for the Properties. The Commission believes that the Applicant's evidence was limited to discussions of its present use and return of the properties and to the use and return under the proposed contract. The Applicant's case is wanting for demonstrations of a good-faith effort to market or otherwise propose the use of the Properties in a manner that is consistent with the spirit of the Landmarks Ordinance in general and the SEVEN HOUSES ON LAKE SHORE DRIVE DISTRICT designation ordinance specifically. In this regard, the Applicant's burden to demonstrate the infeasibility of reasonable alternative uses or reasonable economic returns has not been met.

2) The contract does not establish a value for the Properties.

In reviewing the current level of economic return on property that is the subject of an economic hardship exception application, one of the items discussed in the Rules and Regulations is any real estate appraisals obtained within the previous two years. No such appraisals were submitted by the Applicant. It seems, rather, that the Applicant fixes the alleged value of the properties at a total of \$17 million, based on the amount that the Applicant purports it will receive under the terms of the sales contract. This contract, however, is so speculative that the Commission cannot accept the \$17 million figure the Applicant claims as the value. Also, the contract, executed in contemplation of the proposed demolition of significant historical and architectural features of the landmark Properties, can in no way be construed as an appraisal of the Properties "as is," subject to all applicable landmarks and zoning ordinances. The only such appraisal of the Properties in their present state was submitted by the Interested Parties as their Exhibit No. 12.

Although the Applicant claims that the contract has a value of \$17 million if the Properties are redeveloped, the

terms of the contract show that the amount is subject to adjustments. (Applicant Exhibit No. 124.) The contract provides \$500,000 of earnest money, \$12 million at the closing, and the purchaser's non-recourse promissory note for the balance, subject to adjustments based on future condominium sales. (Applicant Exhibit No. 103.) According to Mr. Shlaes, the final price is effectively "contingent upon the successful sale of the condos to be built at the back of this property under very adverse market conditions." (Transcript, page 810.) Elaborating on this situation, Mr. Shlaes testified:

The price is based on the saleable area of 250,000 square feet of the building. If that area is reduced under the terms of the contract, the price is reduced at the rate of \$68 per square foot, a substantial reduction, in my opinion three times roughly what would be necessary to compensate for the loss of density based on my analysis of the land prices in the area.

But if the allowable building falls below 176,471 square feet, the adjustment would reduce the price to just over \$12 million, not the \$17 million stated. And of that \$12 million, a portion is contingent on the successful sale of the condominiums to be developed. (Transcript, pages 810-811.)

Noting that the contract is more than two years old, and that its price is dependent "on the performance of the developer in the marketplace when he actually goes to sell the units," Mr. Shlaes concluded:

I read all this and read it as extremely speculative. It would be unlikely to be enforced by a prudent purchaser in today's market because of the state of the market about which I wrote fairly extensively in this report and with which the board is no doubt familiar.

The price, in my opinion, is so high as to make the merits of the deal questionable. And I accordingly treated it as a contract that would not likely be available in today's market even at the adjusted price that one might reach after taking out the contingent elements that I have testified to. (Transcript, page 812.)

The Commission notes that the sale price would be further lowered by the Applicant's exercise of the option to purchase the space in the portions of the original buildings remaining after the redevelopment. (Applicant Exhibit No. 103.) Purchase of this space by the applicant could reduce the purchase price by \$2.1 million. (Interested Parties Memorandum, page 22.) Other provisions, such as that for the amount payable by the seller for post-closing possession, could reduce the payment still further. (Applicant Exhibit No. 103.)

The Commission rejects the notion that the "sales price" should be the basis for fixing the value of the Properties for the purposes of the economic hardship exception proceeding. Assuming, though, that such a price was valid for this purpose, the Commission finds that the contract is subject to a number of conditions affecting the ultimate price and, therefore, an amount based on these conditions is too speculative for valuation purposes.

Dr. Rubio testified [that] an appraisal of the properties was undertaken in order to help establish the Applicant's earlier \$12 million asking price. (Transcript, page 361.) Although it is inferred that that appraisal is more than two years old, the period specified in Article V of the Rules and Regulations, the submittal of such an appraisal by the Applicant would have aided the Commission's analysis. The Commission had specifically requested any appraisals made between 1986 and now. (Commission Exhibit No. 7C.)

The Commission finds that the only credible evidence of the value of the Properties, in their present condition

and subject to *all* local ordinances, was the appraisal done by Arthur Andersen & Co. (Interested Parties Exhibit No. 12.) It appraises the Properties, for the purposes of establishing their market value, at \$6.5 million. No such appraisals were submitted by the Applicant. Neither of the Applicant's two financial experts, Mr. King nor Mr. McCann, had been asked to do so by the Applicant. Mr. McCann testified that he was not asked to appraise the Properties but to "examine the properties in relation to the economic hardship as imposed by the landmark designation in relation to alternative uses to which the property may be put." (Transcript, page 847.) He characterized his analysis as an "evaluation study," not an appraisal, noting that the two were distinctly different. The Commission agrees that the two are completely different, which is why the factors under Article V of the Rules and Regulations [specify] appraisals of current value as well as studies of hypothetical uses.

The reasonableness of the Arthur Andersen appraisal for \$6.5 million is underscored by evidence that the Peoples Republic of China offered to purchase the Properties in 1986 for \$6.5 million, presumably for use as a consulate. (Transcript, pages 53-56.) That offer was rejected by the College of Surgeons.

The attitude of the Applicant toward the contract is summed up in a statement by Mr. McCann: "I think the contract is probably the best evidence as to the value of the property for its highest and best use, yes, sir." (Transcript, page 860.) Asked if there were other uses for these Properties, other than the proposed redevelopment, that would still provide an economic return to the owner, Mr. McCann responded:

The properties are capable of producing an economic return. I think the question for a real estate appraiser such as myself and Mr. Shlaes is whether or not it's a reasonable economic return given the

location and characteristics of the property and the market in which it's located. (Transcript, page 846.)

The Commission concludes that there are other reasonable alternative uses for the Properties, but that the contract submitted by the Applicant is premised solely on what Mr. McCann calls the Properties' "highest and best use." Inasmuch as a "highest and best use" standard is inconsistent with the "reasonable economic return" of the Rules and Regulations, the Commission feels that the value it purports to assign to the Properties is not the determining factor in this economic hardship proceeding.

3) *The Commission is required to determine if there has been a loss of all reasonable return, not the highest and best return.*

Both the Applicant and the Interested Parties have submitted their memoranda which include discussions of the Supreme Court's ruling of *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978). Thus, the Commission feels compelled to briefly discuss its understanding of the *Penn Central* case, without issuing a conclusion on the legal debate raised by the memoranda; such conclusions are outside of the Commission's expertise.

The Commission understands that *Penn Central* affirms the laudatory goals of historic preservation in general, and landmark ordinances in particular, and notes the striking similarity between the New York City landmark ordinance involved in *Penn Central* and the Chicago Landmarks Ordinance as applied to these Properties.

Penn Central seems to set a permissibly high standard in determining whether a landmark designation constitutes a governmental "taking" of property. The Applicant would have the Commission believe that a "taking" occurs whenever a designation prevents a landowner from developing a property to its "highest and best use." This

proposition is inconsistent with the Commission's understanding of the letter and spirit of *Penn Central* and subsequent court decisions. In the context of a landmark designation, denying an applicant the highest and best use of a property is not a denial of all reasonable and beneficial use or return. In fact, according to *Penn Central*, a designation that does not prevent the applicant from the continued use [of] the property does not amount to either a taking or an economic hardship.

The Applicant has failed to demonstrate clearly and convincingly that the inclusion of the Properties in the SEVEN HOUSES ON LAKE SHORE DRIVE DISTRICT prevents the College of Surgeons from continuing to use the buildings as offices and a museum. Based upon the testimony of Interested Parties' witnesses Mr. Kelley (Transcript, page 586) and Mr. Vinci (Transcript, page 619) and the Commission's own site inspection, the Applicant has failed to demonstrate that the Properties are uninhabitable or unsuitable for its continued use as a museum and administrative offices. In fact, the designation seems to invite this continued use.

Also, the Applicant fails to show how the designation prevents alternative uses for the Properties. That is, the Applicant fails to show how the denial of demolition permits to allow construction of a 41-story condominium building in place of the majority of the Properties' significant historical and architectural features prevents the College of Surgeons from exploring other more appropriate uses of the Properties.

The Commission finds that the denial of demolition permits which prevents the Applicant's "highest and best use" of the Properties, i.e., the right to build a high-rise condominium building in place of substantial portions of landmark-designated Properties, does not deny either the right to continued use of or other reasonable alternative uses of or return from the Properties.

4) *Other alternatives were demonstrated for the reasonable economic return on the Applicant's properties.*

Several witnesses for the Applicant discussed the point that the College of Surgeons has consistently desired to maintain its presence in the Properties. Yet, as indicated in the public hearing testimony, the Applicant has taken few positive steps toward that end; rather, it has consistently deferred capital improvements to the Properties while entertaining various redevelopment proposals that have been brought to it. With the exception of two versions of a 1966 plan commissioned by the College of Surgeons (Transcript, pages 39-42.) which were ultimately rejected by the Applicant's membership, the Applicant has never initiated any other plans for the reuse, rehabilitation, or redevelopment of the Properties. By its actions, or inactions, the Applicant manifests an indifferent attitude toward the Properties' continued use.

According to its witnesses, the Applicant has never attempted to sell or lease one of the Properties in order to generate funds to keep and maintain the other. (Transcript, pages 89, 91-92.) Given that the Applicant claims space needs of 20,000 square feet, the approximate square footage of the 1524 building and coach house alone, the sale or lease of the 1516 property seems an obvious alternative to be explored. Nor, according to public records of the Recorder of Deeds of Cook County, has the Applicant mortgaged the Properties anytime within the last 20 years to raise funds for improving them.

The Commission believes that a sale of either of the Properties for the amounts of the Arthur Andersen & Co. appraisal, \$3.1 million for 1516 and \$3.4 million for 1524, would represent a reasonable return on the Applicant's initial investment. The Applicant purchased the 1516 property in 1947 for \$85,000, and the 1524 property in 1950 for \$185,000. Using these figures, Mr. Shlaes responded to a question about reasonable return:

There are a number of ways to consider that question. I'll offer you two.

One, looking first at the acquisition cost, the 1516 property was acquired January 21, 1947, for \$85,000. Today it's worth \$3,100,000 by my appraisal process. And that's been 44 years.

I have a little calculator, like most real estate appraisers. And I put those numbers into my little calculator, and it said that without regard to any rental value, simply starting with \$85,000 and ending at \$3,100,000 forty-four years later, the compound annual net return was 8.52 percent, which is a lot higher than the returns being required by investors in real estate, savings accounts, U.S. Bonds or anything else in 1947.

I then tested this inputting a little bit of rental value to the property. After all, the occupant owner has enjoyed the benefit of the use and occupancy of the property for 44 years.

And I took as rent 6 percent of the investment, 6 percent of \$85,000, and in effect wrote to them a flat lease, no escalations, no increases, no anything for 44 years at 6 percent rent on the initial cost, which comes to \$5,100 a year, and added that to the gain in value over the 44 years. Doing that brought me to an annual compound return of 10.57 percent.

If you are willing to use a rate of 10 percent which would be—a rent of—based on 10 percent of the property value, which today would be more realistic, the corresponding yield would be 12.5 percent.

I went through similar calculations on the Countiss House [1524] which was acquired June 22, 1950, for \$185,000 and is today worth \$3,400,000.

Looking only at the capital gain without regard to the use of the property over the 41-year period, the

return is 7.36 percent, again very favorable compared to the other returns available at the time.

The gain with a rent calculated at 6 percent of the acquisition cost, remaining flat throughout the term of the lease, the rent would be \$11,100 a year. The yield would be 9.78 percent.

Increasing the rent to 10 percent of the acquisition cost or \$18,500 a year flat for 41 years, the return would be 12.01 percent.

In real life, these rents would have been adjusted upward over time to reflect rising values and inflation, so that the actual return had by the owners over this period is substantially higher than the figures I have given you, which I believe are extremely conservative. (Transcript, pages 738-740.)

The Commission finds that, based on the acquisition costs and appraised value for the Properties, the return on the Applicant's investment is 8.52 percent for 1516 and 7.36 percent for 1524. According to Mr. Shlaes, both [of] these returns exceed returns required by investors when the Properties were purchased.

The Commission notes further that the Applicant has had the use and benefit of the Properties, without rental expense, throughout its ownership. The amount of the rental savings that has accrued to the Applicant over the years, at this prime location, constitutes a significant return. According to Mr. Shlaes, when some moderate rental value is considered, the annual net return on the Properties is increased to between 10.57 and 12.5 percent for 1516 and to between 9.78 and 12.01 percent for 1524. The Commission believes that this return, with rental savings factored in, constitutes a significant and continuing economic return from the Properties.

As discussed earlier, the Applicant received an offer to purchase the Properties in 1986 from the Consulate

General of the People's Republic of China. (Transcript, page 55; Applicant Exhibit No. 115.) That offer, for \$6.5 million, was rejected by the Applicant. The Commission notes that, when adjusted according to the Consumer Price Index, the \$6.5 million amount of 1986 would equal \$8.2 million today.

The Commission believes that other alternatives exist for which a reasonable economic return can be realized, alternatives that would use the Properties in substantially their present form. This view is based on the evidence offered of the appraised values of the Properties and the returns calculated on the Applicant's purchase prices and, further, on the evidence of interest in purchase of the Properties, particularly the offer of \$6.5 million in 1986.

- 5) *The Applicant had knowledge of the Commission's consideration of landmarks designation and of the eventual designation itself.*

The Commission began its consideration of the SEVEN HOUSES ON LAKE SHORE DRIVE DISTRICT on June 1, 1988, when it received a report on the district from the Commission staff. In a letter dated that same day, the Commission notified the Applicant of this proposal, included a copy of the staff report, and specifically invited the Applicant to attend the July Commission meeting, when the proposed district would be discussed. (Applicant Exhibit No. 101.) At that July 6, 1988, public meeting, the Commission made a preliminary determination that the district met one or more of the criteria for landmark designation. Such a determination requires that all applications for building or demolition permits relating to such property be forwarded to the Commission for its review. (Landmarks Ordinance, Section 21-77.) The Applicant was notified of this preliminary determination by a certified letter dated July 6, 1988. (Applicant Exhibit No. 102.)

Thereafter, the Commission followed the designation procedure and all notice provisions outlined in the Landmarks Ordinance. The Commission convened a public information meeting for the property owners within the proposed district on September 22, 1988; the Applicant was represented at that meeting by its International Secretary General and legal counsel. A public hearing on the proposal was scheduled for April 7, 1989. At the specific request of the Applicant, the Commission continued the hearing to April 26, 1989. Representatives of the Applicant and its legal counsel appeared at the hearing.

Following the hearing, at a May 3, 1989, public meeting, the Commission voted to recommend the SEVEN HOUSES ON LAKE SHORE DRIVE DISTRICT to the City Council for its consideration of Chicago Landmark status. Legal counsel represented the Applicant at both that meeting and at the subsequent hearing of the City Council Committee On Historical Landmarks Preservation, held on May 18, 1989. The SEVEN HOUSES ON LAKE SHORE DRIVE DISTRICT was designated by ordinance as a Chicago Landmark on June 28, 1989. Notifications of the designation were mailed by certified mail to all owners, including the Applicant, on August 21, 1989.

The Commission notes that the Properties are not only within a designated Chicago Landmark district but also were listed on the National Register of Historic Places in 1978 as part of the "Gold Coast Historic District," and in 1982 were listed individually on the Illinois Register of Historic Places. Regarding the process of listing on the Illinois Register, Mr. Edelman testified, "Throughout the years, including initiation of litigation in 1982, the International College of Surgeons has continuously and consistently objected to actions to encumber its properties with landmark status." (Transcript, page 16.) However, the Commission notes that, contrary to the claim of

consistent opposition, the Applicant, on March 1, 1983, voluntarily dismissed its complaint challenging the Properties' listing on the Illinois Register.

According to testimony at the public hearing, 1516 North Lake Shore Drive was purchased by the College of Surgeons in 1947; 1524 North Lake Shore Drive was purchased in 1950. (Transcript, pages 459-460.) The Applicant claims it has continuously used the Properties principally as the location of its administrative offices and International Museum of Surgical Science. According to Mr. Edelman, in 1966 the Applicant proposed to redevelop the site with a residential high-rise, including space for the Applicant's offices and museum. That plan was not carried out due to the unavailability of financing. (Transcript, page 43.) Subsequently, the College of Surgeons received several offers to purchase the Properties, for either the continued use of the present structures or for demolition and redevelopment. Mr. Edelman testified that negotiations for the current sales contract began in January, 1988 (Transcript, page 56.); that the contract was signed by the College of Surgeons' International Executive Council on March 30, 1989; and was ratified by the International Board of Governors on October 10, 1989. (Transcript, page 34.)

Based on this chronology, the Applicant claims that its "development expectations" must be taken into account "in determining whether the City's power to landmark [sic] a building constitutes a permissible interference with a property owner's right to develop property in a way that was permissible when the property was acquired." (Applicant Memorandum, page 11.) The Applicant, in effect, purports that the Applicant's expectations *at the time of purchase* control the ultimate redevelopment of the Properties. The Commission notes that such an argument, carried to its logical conclusion, would preclude the application of any duly authorized regulatory ordinance on a property where the statute was enacted sub-

sequent to the purchase of the property. Under the Applicant's logic not only are the provisions of the Chicago Landmarks Ordinance, enacted in 1968, inapplicable to its Properties to the extent the ordinance interferes with the applicant's perceived development expectations, so too is the Lake Michigan and Chicago Lakefront Protection Ordinance which was adopted in 1973. Such an interpretation is too erroneous for serious consideration.

As outlined above, the Commission has consistently provided the Applicant with notice of all of the Commission actions taken with regard to the Applicant's Properties. The first formal notice of the Commission's proceedings dates from June of 1988. Designation of the Properties by ordinance, as part of the SEVEN HOUSES ON LAKE SHORE DRIVE DISTRICT, occurred on June 28, 1989. The Applicant was apprised of these and all intervening actions. Additionally, the Applicant was on notice of the overall historical and architectural significance of the Properties as early as 1978, with the inclusion of the Properties in the National Register "Gold Coast District," and certainly no later than 1982, when the Properties were listed on the Illinois Register.

Despite these notices and with full knowledge of the Commission's actions, the Applicant took part in negotiations for a sale contract in contemplation of the proposed high-rise development. The contract was not ratified until October of 1989, four months following the City Council designation and sixteen months after the Commission's initial notice to the Applicant.

The rule cited by the Applicant in its own memorandum defines the threshold for establishing an owner's development expectations:

. . . any substantial change of position, expenditures, or incurrence of obligations occurring under a *building permit or in reliance upon the probability of its issuance* is sufficient to create a right in the permittee

and entitles him to complete the construction and use the premises for the purposes originally authorized irrespective of a subsequent zoning or change in zoning classification. (emphasis added) (Applicant Memorandum, page 12, citing *Fifteen Fifty No. State Bldg. Corp. v. City of Chicago*, 15 Ill.2d 408, 416, 155 N.E.2d 97, 101 (1958).)

The language of the cited opinion seems to clearly indicate that legitimate development expectations arise only in the context of an issued building permit or in the probability of its issuance. The City has issued no permits for the subject Properties; the issuance of demolition permits is, of course, a vital component of the present action. Because no permits have been issued, it cannot be said that the Applicant "changed its position" in reliance on a building permit or the probability of its issuance. Indeed, the Applicant's own contract is contingent on the Applicant obtaining all the necessary permits for demolition and construction. (Applicant Exhibit No. 103.) This contingency is inconsistent with the Applicant's assertion of a clear-cut, unwavering belief of its right to develop the Properties as a high-rise condominium building.

The Commission notes that the various approvals sought by the Applicant have not been obtained. The Commission denied the Applicant's applications for four demolition permits in January, 1991. On May 9, 1991, the Chicago Plan Commission denied the application for Lakefront Protection Ordinance approval, and recommended the denial by the City Council of an ordinance to amend the zoning classification from R-8 to a Residential Planned Development. On June 12, 1991, the City Council denied the ordinance to amend this zoning.

The Commission rejects any notion that the inclusion of the Applicant's Properties within the SEVEN HOUSES ON LAKE SHORE DRIVE DISTRICT and the denial

of the demolition permit applications by the Commission have denied the Applicant of its "investment expectations." Any such investment expectations were formed by the Applicant while on notice of and in disregard of the pending status and eventual passage of the landmark designation ordinance.

CONCLUSION:

The Commission on Chicago Landmarks issues this report as its final administrative decision finding that no economic hardship resulted to the International College of Surgeons and the United States Section of the International College of Surgeons from the Commission's January 9, 1991, decision to disapprove the four permit applications to demolish portions of the Properties located at 1516 and 1524 North Lake Shore Drive.

/s/ Peter C. B. Bynoe
PETER C. B. BYNOE
Chairman

Dated: July 3, 1991

/s/ William M. McLenahan
WILLIAM M. MCLENAHAN
Director

[City Seal]

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January 10, 1992

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF ILLINOIS
 EASTERN DIVISION

Nos. 91 C 1587 and 91 C 5564
 Consolidated

INTERNATIONAL COLLEGE OF SURGEONS, *et al.*,
Plaintiffs,

v.

CITY OF CHICAGO, *et al.*,
Defendants.

MEMORANDUM OPINION

This action, arising under the Fifth and Fourteenth Amendments to the federal Constitution, comes before the court on defendants' motions to dismiss plaintiffs' complaints pursuant to Federal Rule of Civil Procedure 12(b)(6). For the reasons stated below, defendants' motions are granted in part and denied in part.

FACTS

Plaintiffs International College of Surgeons and the United States Section of the International College of Surgeons (collectively, "the College") own, as tenants in common, two parcels of land at 1516-1524 North Lake Shore Drive in Chicago, Illinois (the "subject property"). Complaint for Administrative Review, 91 C 1587 ("First Complaint") at ¶¶ 1, 8. The subject property contains two buildings (in which the College operates its administrative headquarters and museum) and a coach house. First Complaint at ¶ 8, 10.

Following a public meeting on July 6, 1988, defendant Landmarks Commission ("the Commission") made a preliminary determination that the subject property and five other parcels met one or more of the criteria for landmark designation. The College was notified of the preliminary designation by certified mail. On September 22, 1988, the Commission held a public information meeting for all property owners within the proposed district. The College was represented at that meeting by its International Secretary General and legal counsel. Complaint for Administrative Review, 91 C 5564 ("Second Complaint"), Exhibit "A" p. 27.

In February 1989, after months of negotiations, the College contracted with plaintiff Robin Construction Company ("Robin") for the sale and redevelopment of the subject property. Second Complaint at ¶ 10, First Complaint at ¶ 2. Four months later, upon the recommendation of the Commission and despite the College's objections, the Chicago City Council enacted a designation ordinance officially naming the subject property and five other parcels as "The Seven Houses on Lake Shore Drive Landmark District" (the "Seven Houses District") pursuant to Chicago's Landmarks Ordinance. First Complaint at ¶ 9.

Applications for Demolition Permits: Case No. 91 C 1587

On October 5, 1990, plaintiffs applied to the Chicago Building Department for permits to demolish the coach house and rear portions of the main buildings on the subject property. First Complaint at ¶ 10. Pursuant to the Landmarks Ordinance, the Building Department referred plaintiffs' applications to the Commission. On October 23, 1990, the Commission issued a preliminary decision denying the demolition permit applications on the ground that the proposed destruction would detract from or eliminate "critical features" of the Seven Houses District. First Complaint at ¶ 11.

In November 1990, the Commission held an informal conference on the permit applications, at which plaintiffs were allowed to present a partial description of their proposed redevelopment plans. However, the Commission refused to consider any redevelopment evidence on the ground that it was not material to the consideration of plaintiffs' demolition permits. First Complaint at ¶ 12. On December 18, 1990, the Commission held a public hearing on the permit applications, and the plaintiffs again sought to present evidence of the proposed redevelopment. Again, the Commission refused to consider any evidence of plaintiffs' redevelopment plans and the hearing officer would not allow plaintiffs to make an offer of proof as to the unconsidered evidence. First Complaint at ¶ 13.

On January 9, 1991, the Commission issued its final administrative decision denying plaintiffs' requests for demolition permits. First Complaint at ¶ 14, Exhibit "A." Plaintiffs filed a state court complaint for administrative review on February 13, 1991. Defendants filed a notice of removal on March 15, 1991, on federal question grounds.¹

Although it was drafted as a state court complaint for administrative review, plaintiffs' complaint raises several federal constitutional issues. Plaintiffs allege that the Landmarks Ordinance is unconstitutional on its face and as applied because it: (1) denies due process by authorizing the Commission to preliminarily designate property as a "landmark" without affording the owners notice and an opportunity to object before the preliminary designation is applied (First Complaint at ¶ 16(a)); (2) violates equal protection by excluding religious organizations' church buildings from the Landmarks Ordinance without exempting other not-for-profit organizations (First Com-

¹ This court denied plaintiffs' motion to remand the case on August 27, 1991.

plaint at ¶ 16(d)); (3) constitutes a taking in violation of the Fifth and Fourteenth Amendments because it prevented plaintiffs from implementing redevelopment plans that were adopted before the designation ordinance was passed (First Complaint at ¶ 16(e)). Plaintiffs allege that the designation ordinance denies them equal protection and due process because: (1) it arbitrarily and capriciously groups seven noncontiguous buildings into the "Seven Houses District" (First Complaint at ¶ 16(f)); (2) it arbitrarily and capriciously designates every facade of every building in the district as "protected," while other designation ordinances "landmark" only those portions of the buildings which can be seen from the public way (First Complaint at ¶ 16(g)). Plaintiffs also allege that the Commission denied them equal protection and due process by treating them inequitably in comparison to other owners of "landmarked" property (First Complaint at ¶ 16(g)).² Plaintiffs argue that the Commission deprived them of their procedural due process rights by: (1) refusing to allow them to present evidence that the "Seven Houses District" designation ordinance was arbitrary and capricious (First Complaint at ¶ 16(g)); (2) refusing to consider evidence of their proposed redevelopment (First Complaint at ¶ 16(j)); and (3) conducting plaintiffs' hearing in a biased and adversarial manner (First Complaint at ¶¶ 16(h)(iii), (iv)).

Economic Hardship Exception: Case No. 91 C 5564

On February 8, 1991, plaintiffs applied to the Commission for an "economic hardship exception." Second

² Plaintiffs allege that the designation of all facades was solely to prevent the College's proposed redevelopment, noting that other owners of landmarked property (1250 and 1254 Lake Shore Drive) were permitted to demolish and redevelop parts of their properties. Plaintiffs contend that the Commission's refusal to permit their demolition and proposed redevelopment violates due process and equal protection in light of their permitting others to demolish and redevelop parts of their structures that cannot be seen from the public way. First Complaint at ¶ 16(g).

Complaint at ¶ 19. The Landmarks Ordinance provides that an applicant whose request for a construction or demolition permit is denied "may within thirty (30) days apply to the Commission for an economic hardship exception on the basis that the denial of permit will result in the loss of all reasonable and beneficial use of or return from the property" Landmarks Ordinance § 21-86. On March 5 and 7 and May 7 and 8, 1991, the Commission held public hearings on plaintiffs' application for an economic hardship exception, at which plaintiffs offered evidence to prove their entitlement to the exception and interested parties offered evidence in opposition. Second Complaint at ¶ 20. On July 3, 1991, the Commission issued its final administrative decision denying plaintiffs' application for an economic hardship exception. Second Complaint at ¶ 21, Exhibit "A."

Plaintiffs filed a complaint for administrative review in state court on August 7, 1991. On September 3, 1991, defendants filed a notice of removal on federal question grounds. Plaintiffs allege that the Landmarks Ordinance is unconstitutional on its face and as applied to the subject property because it: (1) violates due process guarantees of the Fourteenth Amendment (Second Complaint at ¶¶ 23(a), (f), (k)); (2) denies equal protection of the laws in violation of the Fourteenth Amendment (Second Complaint at ¶¶ 23(b), (g)); (3) constitutes an uncompensated taking in violation of the Fifth and Fourteenth Amendments (Second Complaint at ¶¶ 23(c), (h), (k)).

After removal to this court, plaintiffs' economic hardship suit (91 C 5564) was consolidated with their demolition permit action (91 C 1587). Defendants now seek to dismiss plaintiffs' complaints pursuant to Federal Rule of Civil Procedure 12(b)(6).

DISCUSSION

In considering a motion to dismiss, the court accepts the truth of all facts alleged in plaintiffs' complaint and draws all reasonable inferences from the pleadings in plaintiffs' favor. *Gillman v. Burlington N. R.R. Co.*, 878 F.2d 1020, 1022 (7th Cir. 1989). Dismissal is appropriate "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Kunik v. Racine County, Wisconsin*, Nos. 90-1234, 90-1235, 90-1262 & 90-1330, slip op. at 10 (7th Cir. Oct. 30, 1991) (quoting *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984)).

The "Takings" Allegations

Plaintiffs allege that the Landmarks Ordinance is invalid both on its face and as applied because it effects an uncompensated taking in violation of the Fifth and Fourteenth Amendments. First Complaint at ¶ 16(e), Second Complaint at ¶¶ 23(c), (h), (k). Specifically, plaintiffs contend that the Landmarks Ordinance's standard for economic hardship is facially unconstitutional because it requires an applicant to prove that "denial of the permit will result in the loss of all reasonable and beneficial use of or return from the property" and fails to compensate landmark owners who are unable to enjoy or receive the fair market value of their property. Second Complaint at ¶ 23(k). Plaintiffs argue further that the Landmarks Ordinance constituted an uncompensated "taking" as applied to the subject property because it barred implementation of redevelopment plans that were adopted before the passage of the "Seven Houses District" designation ordinance. First Complaint at ¶ 16(e).

The Supreme Court has held that New York City's landmarks ordinance did not effect a "taking" of a landmark owner's property because the restrictions promoted the public interest in preserving historic buildings while

permitting "reasonable beneficial use of the landmark site" and a "reasonable return" on [the owner's] investment." *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 136, 138 (1978). Similarly, the Chicago ordinance's standard for economic hardship recognizes a landmark owner's need for "reasonable and beneficial use of or return from the property." As the *Penn Central* Court observed, "the 'taking' issue in these [land-use regulation] contexts is resolved by focusing on the uses the regulations permit." *Id.* at 131. Here, as in *Penn Central*, the Landmarks Ordinance does not affect plaintiffs' ability to continue using the subject property as a corporate headquarters or museum. *See id.* at 121. Although the Commission refused to permit the demolition of portions of the main buildings and coach house, it did not foreclose any redevelopment of the subject property or any different use.

The fact that plaintiffs may not be able to make the most profitable use of the subject property is not sufficient to state a "takings" claim, *Goldblatt v. Hempstead*, 369 U.S. 590, 592 (1962), and "the submission that [plaintiffs] may establish a 'taking' simply by showing that they have been denied the ability to exploit a property interest that they heretofore had believed was available for development is quite simply untenable," *Penn Central*, 438 U.S. at 130. Even a substantial reduction in the property's value is not sufficient to establish a "taking." *Id.* at 131 (citing *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926)) (75 percent diminution in value caused by zoning law); *Hadacheck v. Sebastian*, 239 U.S. 394 (1915) (87.5 percent diminution in value). Plaintiffs have not alleged that the Landmarks Ordinance has deprived them of all reasonable and beneficial use of or return from the subject property, and mere disappointed expectations do not amount to an unconstitutional "taking."³ Defendants' motions to dismiss plaintiffs' "takings" claims are granted.

³ Because plaintiffs' "takings" claims are dismissed for failure to state a claim, the court does not consider defendants' argument

Denial of Equal Protection

Plaintiffs allege that the Landmarks Ordinance facially violates the Equal Protection Clause of the Fourteenth Amendment. Second Complaint at ¶ 23(g). The court disagrees. A classification that does not impinge a fundamental right or disadvantage a "suspect class" will be upheld if it bears a rational relation to a legitimate state interest. *Plyler v. Doe*, 457 U.S. 202, 216 (1982); *Sklar v. Byrne*, 727 F.2d 633, 636 (7th Cir. 1984). Plaintiffs have not alleged that the Landmarks Ordinance bears no rational relation to the legitimate goal of preserving Chicago's historic buildings. See *Penn Central*, 438 U.S. at 134 (landmark preservation is legitimate public goal). The court grants defendants' motion to dismiss plaintiffs' claims that the Landmarks Ordinance facially violates the equal protection clause.⁴

Plaintiffs allege that the designation ordinance denies them equal protection because it groups seven noncontiguous buildings into the "Seven Houses District," and designates every facade of every building in the district as "protected," while other designation ordinances "landmark" only those portions of the buildings which can be

that plaintiffs' failure to pursue a state court inverse condemnation action renders the claims "unripe" for adjudication.

⁴ Plaintiffs also allege that the Landmarks Ordinance facially violates equal protection by excluding religious organizations' church buildings from the Landmarks Ordinance without exempting other not-for-profit organizations. First Complaint at ¶ 16(d). Where, as here, the ordinance does not discriminate among religious organizations, exempting the church buildings of religious organizations will not trigger strict scrutiny under the Equal Protection Clause of the Fourteenth Amendment. See *Corporation of Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 339 (1987) (upholding religious employers' exemption from Title VII). Exempting churches from the Landmarks Ordinance seems rationally related "to the legitimate purpose of alleviating significant governmental interference with the ability of religious organizations to define and carry out their religious missions."

seen from the public way. Plaintiffs allege further that the Commission denied them equal protection and due process by permitting other owners within the "Seven Houses" district to demolish parts of existing buildings and erect substantial additions. First Complaint at ¶¶ 16(f), (g). Plaintiffs argue that the Commission's actions were designed solely to stop their proposed development. First Complaint at ¶ 16(g).

Although it is true that uneven enforcement of a law does not violate the Constitution where, as here, the enforcement decisions are not based on "impermissible grounds . . . such as race, religion, or exercise of constitutional rights," *Jarrett v. United States*, 822 F.2d 1438, 1443 (7th Cir. 1987), plaintiffs appear to allege more than "selective prosecution." Plaintiffs are entitled to try to prove that the Commission unjustly singled their properties out (through a combination of executive and legislative action) for unique treatment. See *Falls v. Town of Dyer*, 875 F.2d 146, 148 (7th Cir. 1989). If the properties were singled out, and they are not a legitimate "class," plaintiffs may have a constitutional claim. *Id.* Accordingly, defendants should answer the allegations in ¶¶ 16(f) and (g) of the First Complaint.

Deprivations of Due Process⁵

Plaintiffs argue that, on its face, the Landmark[s] Ordinance denies due process by authorizing the Commission to preliminarily designate property as a "landmark" without affording the owners notice and an opportunity to object *before* the preliminary designation is applied. First Complaint at ¶ 16(a). However, as defendants note, property owners are entitled to written notice of any pre-

⁵ In their second complaint, plaintiffs allege only that the Landmarks Ordinance is constitutionally invalid, both on its face and as applied, because it deprives property owners and plaintiffs of their property without due process of law in violation of the Fourteenth Amendment. Second Complaint at ¶¶ 23(a), (f). These allegations are conclusory and insufficient to state a claim for relief.

liminary determination, Chicago, Ill., Municipal Code, § 2-120-650, and a public hearing on the merits of such a determination, Chicago, Ill., Municipal Code, § 2-120-800. Plaintiffs fail to allege how these procedures were insufficient to safeguard their constitutional rights. See *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 195 (1985) ("meaningful postdeprivation process" can satisfy due process clause). The court grants defendants' motions to dismiss plaintiffs' allegations that the Landmarks Ordinance facially denies procedural due process to property owners.

Plaintiffs argue further that the Commission denied them due process by refusing to consider evidence of their proposed redevelopment. First Complaint at ¶¶ 16(i)-(k). Plaintiffs contend that the Commissions' Rules and Regulations required it to consider the redevelopment evidence, and its failure to do so deprived plaintiffs of a fair hearing. The court disagrees. The Rules and Regulations state two conditions that must be satisfied before a demolition permit will be granted: (1) the property proposed for demolition does not contribute to the character of the district, and (2) the proposed redevelopment is approved by the Commission.⁶ The Commission's refusal to consider plaintiffs' redevelopment evidence was entirely justified, given its conclusion that the property proposed for demolition contributed to the character of the

⁶ The Commission's Rules and Regulations provide in pertinent part:

The Commission will consider allowing the demolition of such non-contributing improvements within designated districts based on the following two conditions: (1) the property proposed for demolition is deemed to be non-contributing to the character of the district, and its removal will not have a negative effect on the character of the district; and (2) the proposed redevelopment of the property is reviewed and approved by the Commission

Rules and Regulations, Article IV, Section C (emphasis added).

"Seven Houses District." Defendants' motions to dismiss plaintiffs' procedural due process allegations are granted.

Plaintiffs allege further that the Commission denied them a fair hearing by conducting the proceedings in a biased and adversarial manner. First Complaint at ¶¶ 16(h)(iii), (iv). As defendants note, an administrative agency may act as both an investigatory and adjudicatory body during the course of proceedings without violating due process. *Withrow v Larkin*, 421 U.S. 35, 56 (1975). Plaintiffs have not alleged specific incidents that demonstrate bias. The court should not be asked to comb the administrative record to locate evidence of bias. Plaintiffs will be granted time to amend their complaint to allege specific incidents of bias.

CONCLUSION⁷

Defendants' motions to dismiss plaintiffs' complaints are granted in part and denied in part.

⁷ The court reserves ruling on defendants' motions to dismiss plaintiffs' pendent state claims pending resolution of plaintiffs' federal claims, except to deny those portions of defendants' motions which argue that plaintiffs' state administrative review claims should be dismissed for failure to name all necessary parties as defendants. Defendants contend that plaintiffs should have named as defendants all persons who filed written appearances at the public hearings. This argument is untenable. The Illinois Administrative Review Law requires only that an "administrative agency and all persons, other than the plaintiff, who were parties of record to the proceedings before the administrative agency shall be made defendants." Ill. Rev. Stat. ch. 110, § 3-107 (emphasis added). Defendants do not allege that plaintiffs failed to name as a defendant any party of record to the administrative proceedings, and they fail to cite any authority which requires naming non-parties as defendants. See *Community Mental Health Council, Inc. v. Dept. of Revenue*, 186 Ill. App.3d 73, 541 N.E.2d 1330, 1333 (1st Dist. 1989) (plaintiff in administrative review action not statutorily required to name as defendant an entity which was not a party of record to administrative proceedings).

The following claims are dismissed with prejudice, because it does not appear that the defects could be cured by amendment:

First Complaint (91 C 1587):

¶ 16(a) (Landmark[s] Ordinance facially denies procedural due process);

¶ 16(d) (religious exemption denies equal protection);

¶ 16(e) (designation ordinance effects unconstitutional "taking");

¶¶ 16(i-k) (Commission's refusal to consider redevelopment evidence denied due process).

Second Complaint (91 C 5564):

¶¶ 23(b), (g) (equal protection);

¶¶ 23(c), (h) ("takings");

¶ 23(k) (economic hardship standard denies due process).

The following claims are dismissed without prejudice:

First Complaint (91 C 1587):

¶¶ 16(h)(iii), (iv) (Commission bias).

Second Complaint (91 C 5564):

¶¶ 23(a), (f) (due process).

Plaintiffs may have until January 31, 1992, to amend these claims in accordance with this opinion.⁸

Defendants' motions to dismiss the allegations in plaintiffs' First Complaint, ¶¶ 16(f) and (g) are denied. Defendants should answer these allegations by January 31, 1992.

⁸ The amended claims can be consolidated in one amended complaint.

DATED: January 10, 1992

ENTER: /s/ John F. Grady
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

(Caption Omitted)

**PLAINTIFFS' FIRST AMENDED CONSOLIDATED
COMPLAINT FOR ADMINISTRATIVE REVIEW**

Pursuant to the Memorandum Opinion and Order entered in January 10, 1992 and the Order of January 29, 1992, Plaintiffs, by their attorneys, for their First Amended Consolidated Complaint in Causes Nos. 91 C 1587 and 91 C 5564 against defendants, state as follows:

Parties

1. Plaintiffs the International College of Surgeons and the United States Section of the International College of Surgeons (collectively, the "College") are not-for-profit corporations which were organized and are existing under the laws of the District of Columbia and which maintain their principal offices in Chicago, Illinois.

2. Plaintiff Robin Construction Corporation ("Robin") is a corporation, licensed and authorized to do business in the State of Illinois, which is engaged in the real estate development business, including the development and construction of multiple-family dwelling buildings.

3. Defendant the City of Chicago (the "City" or "Chicago") is a municipal corporation, organized and operating pursuant to the laws of the State of Illinois in the County of Cook.

4. Defendant Commission on Chicago Landmarks (the "Commission") is an administrative agency which was created by an ordinance adopted by the City Council of the City of Chicago (the "City Council") on March 11, 1987 (Municipal Code of Chicago, Chapter 21, Sections

21-62 through 21-95) (the "Landmarks Ordinance") and which is authorized to make final decisions within the meaning of the Illinois Administrative Review Law, Ill. Rev.Stat. ch. 110, §§ 3-101 *et seq.*

5. Defendant Peter C.B. Bynoe was the Chairman, and defendants Irving J. Markin, Thomas E. Gray, John W. Baird, Josue Gonzales, Amy R. Hecker, David R. Mosena, [Marian] Despres, Charles Thurow, and Charles Smith were the other members, of the Commission, and all acted together as the Commission, at all times relevant herein.

6. Defendant Daniel W. Weil was, at all times relevant herein, the Commissioner of the Department of Buildings of the City of Chicago (the "Department of Buildings"), which official is designated by the Municipal Code of Chicago as having responsibility for the issuance of demolition and building permits.

Jurisdiction and Venue

7. This Court has jurisdiction of these actions pursuant to 28 U.S.C. § 1331, in that certain of the claims asserted herein arise under the Constitution of the United States and the other claims asserted herein are subject to this Court's pendent jurisdiction.

8. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b), in that the defendants reside, the property that is the subject of these actions is situated, and the events giving rise to the plaintiffs' claims occurred, in this judicial district.

Facts

9. The College is an organization formed in 1935 which now consists of approximately 14,000 surgeons who practice surgery in 108 countries. The College was determined to be exempt from Federal Income Taxes, as charitable organizations pursuant to Section 501(c)(3) of the Internal Revenue Code, by the Internal Revenue

Service. The College's purpose and mission is to advance the art and science of surgery by bringing together surgeons of recognized performance caliber of all nations. To fulfill this mission, the College sponsors programs and publications which inform surgeons throughout the world about advances in surgery. For surgeons practicing in poorer countries, the College is the organization that provides their primary source of information concerning advances in surgery. Since 1957, the College has been and continues to be a non-governmental organization in official relations with the World Health Organization in the field of surgery. The College regularly sends surgical teams to "Third-World Countries" to perform needed surgery on the citizens of such countries and provides training to practicing surgeons in such countries.

10. Plaintiffs the International College of Surgeons and the United States Section of the International College of Surgeons, are, and have been for more than 40 years, the owners, as tenants-in-common, of two contiguous parcels of real estate which are commonly known as 1516-1524 North Lake Shore Drive, Chicago, Illinois (the "Subject Property").

11. The Subject Property is improved with two four-story buildings, in which the College maintains its administrative headquarters and operates a public museum named the International Museum of Surgical Science and Hall of Fame (the "Museum"), and two coach houses.

12. Since at least 1966, the College has contemplated developing the Subject Property, and has from time to time since then considered plans and proposals for the development of the Subject Property with a luxury high-rise residential building to be developed in conjunction with the College's continued use of a portion of the new building for its offices and the Museum.

13. The Subject Property is the principal asset of the College, and the development of the Subject Property has

for many years been planned and considered as the principal way of converting this non-income generating asset into a source of funds which is essential to the continued operation of the College and expansion of its mission and purpose.

14. During its planning and consideration of the development of the Subject Property, the College has relied upon the fact that the ordinance and regulations of the City of Chicago have at all times, until the enactment of the Designation Ordinance (described herein in paragraph 23) permitted the construction of a high-rise residential building on the Subject Property.

15. If the College is prohibited from developing the Subject Property in the manner described herein, the College will be unable to continue to occupy the premises because it is financially incapable of acquiring the substantial funds needed to make the repairs and renovation the buildings now require. The buildings have had no substantial improvements to their electrical, plumbing, heating or structural features and systems since they were originally constructed over eighty years ago.

16. If the College is prohibited from developing the Subject Property in the manner described herein, the College will be effectively deprived of its long-term expectation of being able by the development of the Subject Property to obtain the funds it needs to continue its programs and mission, and it will be deprived of the use and benefit of its principal asset.

17. The eastern frontage of the Subject Property adjoins North Lake Shore Drive. To the east of North Lake Shore Drive are the Outer Drive and the Chicago Lakefront. The property immediately to the south of the Subject Property, 1500 North Lake Shore Drive, is improved with a 23-story multiple-family dwelling building. The area west of the Subject Property is improved with a number of high-rise multiple-family dwelling buildings, including 1515 North Astor Street, which is improved

with a 21-story multiple-family dwelling building, and 1555 North Astor Street, which is improved with a 48-story multiple-family dwelling building. The property immediately north of the Subject Property, 1530 North Lake Shore Drive, is improved with a four-story building which is owned and used by the Government of Poland as a consulate. Immediately north of the Polish Consulate, at 1540 and 1550 North Lake Shore Drive, are 16-story and 33-story multiple-family dwelling buildings, respectively. The areas north, south, and west of the Subject Property are developed principally with luxury multiple-family dwelling buildings, and such has been the trend of development in the area surrounding the Subject Property for many years, and such development has been and continues to be permitted, except for the properties included in the Seven House District.

18. As a continuation of the College's long-term plan to develop the Subject Property, the College in January 1988 commenced negotiations with Clark Johnson for the possible development and sale of that Property. The negotiations continued until February 1989, at which time the College entered into a contract for the sale and redevelopment of the Subject Property (the "Contract"), pursuant to which the College will receive the sum of \$17 million, subject to certain adjustments, plus the grant of a condominium consisting of 20,000 square feet for its offices and museum and the granting of \$1 million for the restoration and renovation of its retained space in the existing buildings.

19. Thereafter, the plaintiff Robin acquired the controlling interest in the Contract and became the entity principally responsible for planning, executing and financing the redevelopment of the Subject Property.

20. The redevelopment of the Subject Property which is contemplated under the Contract (the "Proposed Development") would consist of the restoration of the easternmost 40 feet of the two existing four-story build-

ings, the demolition of the remainder of those buildings and the two existing coach houses, and the construction in their place of a 71-unit residential condominium building. Under the Proposed Development, the College's administrative offices and the Museum would be retained at the Subject Property.

21. The Proposed Development has been specifically and carefully designed by architects and preservation consultants to provide a building which would be consistent with and complementary to the buildings surrounding the Subject Property. The portions of the two existing four-story buildings on the Subject Property which would be preserved under the Proposed Development would retain any architecturally significant features which can be seen from the public way. The Proposed Development would preserve and maintain all of the supposed "critical features" of the Subject Property.

22. The Proposed Development was permissible and legal (subject to compliance with the applicable provisions of the Lake Michigan and Chicago Lakefront Protection Ordinance and Chicago Zoning Ordinance, which could be achieved) at the time the College acquired the Subject Property; when it initially decided to develop that Property; when it commenced the negotiations leading up to the execution of the Contract; and, plaintiffs maintain, when it executed the Contract; since, as of February 1989, the Subject Property had not been designated as a landmark by the City.

23. On June 28, 1989, the City Council, pursuant to the Landmarks Ordinance and the recommendation of the Commission, enacted an ordinance (the "Designation Ordinance") which designated the Subject Property and five other properties as a landmark district (the "Seven House District"). The inclusion of the Subject Property within the Seven House District was made over the objection of the College.

24. On or about October 5, 1990, the plaintiffs filed with the Department of Buildings four applications for permits to demolish certain portions of the rear of the two main buildings and the coach houses on the Subject Property, pursuant to the Proposed Development (the "Development Applications"). Pursuant to the Landmarks Ordinance, the Department of Buildings referred the Development Applications to the Commission on October 10, 1990.

25. On October 23, 1990, the Commission issued its preliminary decision denying the Development Applications.

26. On November 6, 1990, pursuant to the plaintiffs' request under Section 21-82 of the Landmarks Ordinance, the Commission held an informal conference with the plaintiffs. The Commission and the plaintiffs were unable to reach an accord at that conference or at any time thereafter.

27. On December 18, 1990, a public hearing was held before the Commission on the Development Applications. At that hearing, the plaintiffs presented evidence to show that the Development Applications should be approved and issued.

28. On January 9, 1991, the Commission rendered a final administrative decision disapproving the Development Applications (the "Development Applications Decision"). A copy of the Development Applications Decision was attached hereto as Exhibit A.

29. The Landmarks Ordinance contains, in Section 21-86, a provision which permits an owner of property whose application for a demolition permit has been denied the opportunity to file an "Economic Hardship Application."

30. On February 8, 1991, pursuant to Section 21-86 of the Landmarks Ordinance, the plaintiffs filed an appli-

cation for an economic hardship exception (the "Hardship Application") with the Commission.

31. On March 5 and 7 and May 7 and 8, 1991, public hearings were held before the Commission on the Hardship Application. At those hearings, the plaintiffs offered evidence to show that the Hardship Application should be granted.

32. On July 3, 1991, the Commission issued its decision denying the Hardship Application (the "Hardship Application Decision"). A copy of the Hardship Application Decision was attached hereto as Exhibit A.

33. The Development Application Decision and the Hardship Application Decision (collectively, the "Decisions") are final administrative decisions which adversely affect the legal rights of the plaintiffs, and terminated the proceedings before the Commission.

34. The plaintiffs timely filed in the Circuit Court of Cook County, Illinois, their Complaints for Administrative Review under the Illinois Administrative Review Law seeking the judicial review of the Decisions, because the Decisions are contrary to law for the reasons set forth herein below.

A. Economic Hardship Standard Is Unconstitutional On Its Face.

35. The standard for granting an economic hardship exception which is contained in the Landmarks Ordinance requires that the designation of a property as a landmark must result in "the loss of all reasonable and beneficial use of or return from the property."

36. That standard excludes from consideration the elements of the interference of the landmarking with the reasonable investment-backed expectations of the property-owner and the character of the landmark designation, which factors must be considered in determining whether

the landmark designation constitutes a taking of property without just compensation.

37. That standard improperly states the element of the economic effect of the landmark designation upon the value of the affected property, which also must be considered in determining whether the landmark designation constitutes a taking of property without just compensation.

38. For these reasons, the economic hardship exception standard in the Landmarks Ordinance is confiscatory in nature and is invalid on its face.

B. The Ordinance As Applied To The Subject Property Constitutes A Taking of Plaintiffs' Property.

39. By precluding the Proposed Development, the Designation Ordinance and the Decisions have prevented the College from developing the Subject Property in the manner it has intended for years prior to the enactment of the Designation Ordinance, and realizing the greatly enhanced value of the Subject Property which would be attendant to the Proposed Development and have thereby greatly diminished the value of the Subject Property, and have prevented the College from making any reasonable or economically viable use of the Subject Property.

40. By precluding the Proposed Development, the Designation Ordinance and the Decisions have interfered with and prevented the College from realizing its reasonable investment-backed expectations for the Subject Property, because the College had planned the Proposed Development and entered into the Contract prior to the enactment of the Designation Ordinance.

41. The defendants have not offered to compensate the College in any amount or manner for the reduction in value and the restriction on the College's right to use and develop the Subject Property which was caused by the Designation Ordinance and the Decisions.

42. The Designation Ordinance and the Decisions constitute a taking of the Subject Property without just compensation, in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, Section 15 of the Illinois Constitution.

C. The Designation Ordinance Is Arbitrary and Capricious and Denies Plaintiffs Due Process and Equal Protection.

43. The Designation Ordinance included and incorporated into a single Seven House District various buildings which are located on seven non-contiguous properties and which lack common characteristics or features.

44. The Designation Ordinance excluded from the Seven House District various buildings on properties which are located in between the various buildings which comprise that District and which possess landmark characteristics which are equal to or greater than the landmark characteristics of the buildings which were included within that District.

45. The Designation Ordinance designated every facade of every building in the Seven House District as being protected by the landmark designation. By contrast, the normal practice of the City Council, as evidenced by its creation of numerous other landmark districts, is to designate as landmarks only those portions of the buildings within those landmark districts which can be seen from the public right-of-way. The landmark designation of every facade of every building, contrary to the Commission's usual practice, was made notwithstanding the statement of the Commission's professional staff that the only "critical features" of the buildings in the Seven House District were those portions of those buildings which are visible from the public way.

46. The Designation Ordinance is arbitrary, capricious, and irrational in nature and is not substantially related to

a legitimate public purpose, and therefore violates the plaintiffs' rights to substantive due process of law under the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, Section 2 of the Illinois Constitution.

47. The arbitrary, capricious, and discriminatory nature of the Designation Ordinance, as described in paragraphs 43-45 of the Amended Complaint, causes the Designation Ordinance to constitute a denial of the plaintiffs' rights to the equal protection of the laws, in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, Section 2 of the Illinois Constitution.

D. The Commission Denied Plaintiffs Procedural Due Process.

48. Section 21-67 of the Landmarks Ordinance authorizes the Commission to issue a preliminary designation of private property as a landmark, thereby preventing the owner of such property from demolishing existing structures or constructing new structures on such property which otherwise would be permissible under applicable ordinances and regulations, without providing the owner with notice or the opportunity for a hearing prior to such a preliminary designation. In addition, the Landmarks Ordinance permits such a preliminary designation to remain in full force and effect without providing the owner of such property with notice or the opportunity for a hearing for an indefinite and indeterminate period of time, the length of which period is at the sole discretion of the Commission.

49. The Commission made its preliminary determination that the Subject Property should be included in the Seven House District without first affording the College an opportunity to describe its investment expectations, a matter that the Commission was required to consider before mailing such preliminary determination.

50. Upon learning of the Proposed Development, and in its consideration of the Development Applications and the Hardship Application, the Commission engaged in a course of conduct which was designed to foreclose any possible redevelopment of the Subject Property and acted in a biased and adversarial manner toward the plaintiffs, thereby denying the plaintiffs a fair and impartial consideration of the Development Applications and the Hardship Application. Among the acts of the Commission which demonstrate its biased attitude toward the Proposed Development and the plaintiffs are the following:

A. Although the Commission's staff originally recommended to the Commission that the creation of the Seven House District preserve as landmarks only those portions of the buildings which were being recommended for inclusion in that proposed District which could be seen from the public way, the Commission recommended to the City Council that the creation of the Seven House District preserve as landmarks all of the exterior facades of all of the structures and all of the "streetscapes" within the boundaries of that proposed District, thereby precluding the Proposed Development.

B. The proceedings which were conducted at the informal conference which was held on November 6, 1990 demonstrate the hostility of the Commission to the plaintiffs and the Proposed Development.

C. The Commission retained two expert witnesses to testify in opposition to the Development Applications.

D. The Commission denied the plaintiffs' request to file a memorandum in support of the Development Applications.

E. On January 9, 1991, the Commission rejected the plaintiffs' applications and requests to amend the Designation Ordinance while denying the plaintiffs' request to present evidence in support of those applications and requests.

F. At the Commission's hearing on January 9, 1991, the Chairman proposed a motion to deny the Development Applications which contained no findings of fact, in violation of Section 21-83 of the Landmarks Ordinance. When the plaintiffs pointed out that deficiency in the motion, the Chairman moved to amend that motion by adding thereto certain findings of fact which previously had been distributed to the Commission but which had not been disclosed to the plaintiffs before (and were not disclosed to the plaintiffs at) that hearing. The Commission then adopted verbatim those findings of fact and approved the Chairman's motion as amended with no discussion or analysis.

G. At the hearing on the Development Applications which was held on December 18, 1990, the Commission refused to permit the plaintiffs to introduce evidence or make an offer of proof concerning the Proposed Development, in violation of Article IV, Section C of the Commission's Rules and Regulations.

51. The effect of the Landmarks Ordinance as applied and the actions of the Commission constitute a deprivation of the plaintiffs' rights to procedural due process of law, in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, Section 2 of the Illinois Constitution.

E. The Designation Ordinance Constitutes Special Legislation.

52. The arbitrary, capricious, and irrational nature of the Seven House District, as described in paragraphs 43-45 of the Amended Complaint, causes the Designation Ordinance to constitute impermissible special legislation, in violation of Article 4, Section 13 of the Illinois Constitution.

F. The Landmarks Ordinance Delegates Legislative Power To The Commission Without Sufficient Criteria.

53. The Landmarks Ordinance delegates to the Commission the legislative powers to designate landmark districts and to decide demolition permit and economic hardship applications without providing the Commission with sufficient criteria to be applied in exercising such delegated powers, in violation of the separation of powers doctrine set forth in Article 2, Section 1 and Article 4, Section 1 of the Illinois Constitution.

G. The Plaintiffs Have A Vested Right To Proceed With the Proposed Development.

54. In reliance on the existing zoning and other land use regulations affecting the use and development of the Subject Property, and in reasonable reliance on the issuance of all necessary permits, Plaintiffs entered into the Contract for the sale and development of the Subject Property and expended substantial sums which gave them a vested right in the continuance of the existing zoning and land use regulation which entitles them to proceed with the Proposed Development notwithstanding the enactment of the Designation Ordinance.

H. The Commission Decision Is Illegal For The Following Additional Reasons.

55. The Decisions, and the findings of fact contained therein, are not supported by substantial evidence in the administrative records.

56. The Decisions, and the findings of fact contained therein, improperly are based upon information which is outside of the administrative records.

57. The Decisions, and the findings of fact contained therein, are contrary to the manifest weight of the evidence in the administrative records.

58. The Commission failed to make findings of fact which are legally sufficient to support the Decisions.

59. The Decisions are based upon criteria contained in the Commission's Rules and Regulations which were neither authorized or approved by the City Council nor contained in the Landmarks Ordinance and which are fatally vague and indefinite.

60. The Decisions improperly are not based upon the applicable criteria contained in the Landmarks Ordinance.

61. The Decisions are contrary to law.

62. Pursuant to Ill.Rev.Stat. ch. 110, ¶ 3-108, plaintiffs demand that the entire transcripts of evidence taken at the public hearings on December 18, 1990, March 5 and 7, and May 7 and 8, 1991, including all exhibits and the Commission's transcripts and minutes of its meetings held on January 9 and July 3, 1991, be filed by the Commission as part of the record in these cases.

WHEREFORE, plaintiffs request that the Court:

1. Declare the Landmarks Ordinance and the Designation Ordinance to be unconstitutional, both on their faces and as applied to the Subject Property;
2. Declare the actions of the Commission, in its consideration of the Development Applications and the Hardship applications, to be unconstitutional;
3. Declare the Decisions to be unconstitutional, null and void, and of no legal force and effect; and
4. Grant the plaintiffs such other and further relief as the Court deems appropriate.

INTERNATIONAL COLLEGE OF SURGEONS,
UNITED STATES SECTION OF THE
INTERNATIONAL COLLEGE OF SURGEONS,
and ROBIN CONSTRUCTION CORPORATION

By: /s/ Richard J. Brennan
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**Article XVII. Commission on Chicago Historical
and Architectural Landmarks**

2-120-580 Purpose of provisions.

It is hereby declared necessary for the general welfare of the citizens of the city of Chicago as an exercise of the home rule authority of the city of Chicago under Article VII, Section 6, of the Illinois Constitution, to protect and encourage the continued utilization of areas, districts, places, buildings, structures, works of art, and other similar objects within the city of Chicago eligible for designation by ordinance as "Chicago Landmarks." The purpose of these sections is the following:

1. To identify, preserve, protect, enhance, and encourage the continued utilization and the rehabilitation of such areas, districts, places, buildings, structures, works of art, and other objects having a special historical, community, architectural, or aesthetic interest or value to the city of Chicago and its citizens;
2. To safeguard the city of Chicago's historic and cultural heritage, as embodied and reflected in such areas, districts, places, buildings, structures, works of art, and other objects determined eligible for designation by ordinance as "Chicago Landmarks";
3. To preserve the character and vitality of the neighborhoods and central area, to promote economic development through rehabilitation, and to conserve and improve the property tax base of the city of Chicago;
4. To foster civic pride in the beauty and noble accomplishments of the past as presented in such "Chicago Landmarks";
5. To protect and enhance the attractiveness of the city of Chicago to homeowners, home buyers, tourists, visitors, businesses and shoppers, and thereby to support and promote business, commerce, industry, and tourism and to provide economic benefit to the city of Chicago;

6. To foster and encourage preservation, restoration, and rehabilitation of areas, districts, places, buildings, structures, works of art, and other objects, including entire districts and neighborhoods, and thereby prevent future urban blight and in some cases reverse current urban deterioration;

7. To foster the education, pleasure, and welfare of the people of the city of Chicago through the designation of "Chicago Landmarks";

8. To encourage orderly and efficient development that recognizes the special value to the city of Chicago of the protection of areas, districts, places, buildings, structures, works of art, and other objects designated as "Chicago Landmarks";

9. To encourage the continuation of surveys and studies of Chicago's historical and architectural resources and the maintenance and updating of a register of areas, districts, places, buildings, structures, works of art, and other objects which may be worthy of landmark designation; and

10. To encourage public participation in identifying and preserving historical and architectural resources through public hearings on proposed designations, building permits, and economic hardship variations. (Prior code § 21-62; Added. Coun. J. 3-11-87, p. 40272)

2-120-590 Commission—Creation, composition and officers.

There is hereby created a commission on Chicago landmarks. The commission shall consist of nine members, eight of whom shall be appointed by the mayor by and with consent of the city council of the city of Chicago. The ninth member shall be the commissioner of planning and development or his designee. The members shall serve without compensation. One of the members shall be designated by the mayor as chairman, another as vice-chairman, and another as secretary. For the purposes of this Article XVII, the "commission" means the com-

mission on Chicago landmarks. (Prior code § 21-63; Added. Coun. J. 3-11-87, p. 40272; Amend. 6-22-88, p. 14547; 12-11-91, p. 10936)

2-120-600 Commission membership and meetings.

A majority of the members of the commission shall constitute a quorum. The commission shall meet on the call of the chairman or of four of its members. The term of each member shall be for four years and until a successor is appointed. No more than four members shall be replaced in a one-year period. Commission members shall be selected from professionals in the disciplines of history, architecture, historic architecture, planning, archaeology, real estate, historic preservation, or related fields, or shall be persons who have demonstrated special interest, knowledge, or experience in architecture, history, neighborhood preservation, or related disciplines. (Prior code § 21-64; Added. Coun. J. 3-11-87, p. 40272)

2-120-610 Commission—Powers and duties.

The commission shall have and may exercise the following duties, powers, and responsibilities:

1. To conduct an ongoing survey of the city of Chicago for the purpose of identifying those areas, districts, places, buildings, structures, works of art, and other objects of historic or architectural significance;

2. To hold hearings and to recommend that the city council designate by ordinance areas, districts, places, buildings, structures, works of art, and other objects as official "Chicago Landmarks," if they qualify as defined hereunder, and to recommend that such designation include all or some portion of the property or any improvements thereon;

3. To cause plaques to be manufactured and installed that identify the significance of designated landmarks and landmark districts;

4. To prepare and publish maps, brochures, and other descriptive and educational materials about Chicago's

landmarks and landmark districts and their designation and protection;

5. To review permit applications for alteration, construction, reconstruction, erection, demolition, relocation, or work of any kind affecting landmarks and structures or unimproved sites in landmark districts and to require the presentation of such plans, drawings, elevations, and other information as may be necessary to review those applications;

6. To advise and assist owners or prospective owners of designated or potential landmarks or structures in landmark districts on technical and financial aspects of preservation, renovation, rehabilitation and reuse, and to establish standards and guidelines therefor;

7. To apply for and accept any gift, grant, or bequest from any private or public source, including agencies of the federal or state government, upon approval by the city council, for any purpose authorized by these provisions;

8. To make recommendations to the city council concerning means to preserve, protect, enhance, rehabilitate and perpetuate landmarks and structures in landmark districts;

9. To adopt, publish, and make available rules of procedure and other regulations for the conduct of commission meetings, hearings, and other business;

10. To prepare and present nominations of landmarks and historic districts to any state or federal registers of historic places;

11. To assume whatever responsibility and duties may be assigned to it by the state under Certified Local Government provisions of the National Historic Preservation Act of 1966, as amended;

12. To cooperate with and enlist the aid of persons, organizations, corporations, foundations, and public agencies in matters involving historic preservation, renovation, rehabilitation and reuse;

13. To advise any city department or agency concerning the effect of its actions, programs, capital improvements or activities on designated or potential landmarks;

14. To consider whether denial of permits affecting landmarks and structures or unimproved sites in landmark district results in economic hardship to property owners;

15. To exercise any other power or authority necessary or appropriate to carry out the purpose of these provisions. (Prior code § 21-65; Added. Coun. J. 3-11-87, p. 40272)

2-120-620 Landmarks—Criteria for designation.

The commission shall familiarize itself with areas, districts, places, buildings, structures, works of art, and other objects within the city of Chicago which may be considered for designation by ordinance as "Chicago Landmarks," and maintain a register thereof. In making its recommendation to the city council for designation, the commission shall limit its consideration solely to the following criteria concerning such area, district, place, building, structure, work of art, and other objects:

1. Its value as an example of the architectural, cultural, economic, historic, social, or other aspect of the heritage of the city of Chicago, state of Illinois, or the United States;

2. Its location as a site of a significant historic event which may or may not have taken place within or involved the use of any existing improvements;

3. Its identification with a person or persons who significantly contributed to architectural, cultural, economic, historic, social, or other aspect of the development of the city of Chicago, state of Illinois, or the United States;

4. Its exemplification of an architectural type or style distinguished by innovation, rarity, uniqueness, or overall quality of design, detail, materials or craftsmanship;

5. Its identification as the work of an architect, designer, engineer, or builder whose individual work is significant in the history or development of the city of Chicago, the state of Illinois, or the United States;

6. Its representation of an architectural, cultural, economic, historic, social, or other theme expressed through distinctive areas, districts, places, buildings, structures, works of art, or other objects that may or may not be contiguous;

7. Its unique location or distinctive physical appearance or presence representing an established and familiar visual feature of a neighborhood, community, or the city of Chicago. (Prior code § 21-66; Added. Coun. J. 3-11-87, p. 40272)

2-120-630 Landmarks—Preliminary determination.

The commission may, by resolution, make a preliminary determination that an area, district, place, building, structure, work of art, or other object meets one or more of the criteria for landmark designation. The commission shall send, by certified mail, return receipt requested, written notice of such determination to the owner of the property. The commission shall also notify in writing the alderman of each ward in which the property is located and all relevant city departments. (Prior code § 21-67; Added. Coun. J. 3-11-87, p. 40272)

2-120-640 Preliminary determination—Request for planning report.

Upon adoption of a resolution making a preliminary determination, the commission shall request a report from the commissioner of planning and development which evaluates the relationship of the proposed designation to the Comprehensive Plan of the city of Chicago and the effect of the proposed designation on the surrounding neighborhood. The report shall also include the commissioner's opinion and recommendation regarding any other plan-

ning consideration relevant to the proposed designation and the commissioner's recommendation of approval, rejection or modification of the proposed designation. The report shall be submitted to the commission within 60 days of the request, if the proposed designation is of an area, place, building, structure, work of art or other object, or within 90 days, if the proposed designation is a district, and shall become part of the official record concerning the proposed designation. The commission may make such modifications, changes and alterations concerning the proposed designation as it deems necessary in consideration of any recommendation of the commissioner of planning and development. If the commissioner declines or fails to submit a report within the time provided herein, the commission may proceed with designation. (Prior code § 21-68; Added. Coun. J. 3-11-87, p. 40272; Amend. 12-11-91, p. 10936)

2-120-650 Request for owner consent.

The commission shall thereafter, by certified mail return receipt requested, notify the owner of the property of the reasons for and effects of the proposed designation and request that the owner consent in writing to the proposed designation. The owner shall respond within 45 days from the date of mailing of the request. In the case of the proposed designation of an area, place, building, structure, work of art or other object, an owner may, within the 45-day period, request an extension of time, not to exceed 120 days, to submit a response. In the case of the proposed designation of a district, the alderman of a ward in which the district is wholly or partly located may, within the 45-day period, request an extension of time, not to exceed 120 days, for owners to submit responses. If the owner consents to designation, the commission shall notify the owner of its determination with respect to the proposed designation within 45 days after receipt of the owner's consent and shall forward its recommendation to the city council as provided in Section 2-

120-690. If the owner declines or fails to give written consent to the proposed designation within the time specified in this section, the commission shall schedule a public hearing on the proposed designation. (Prior code § 21-69; Added. Coun. J. 3-11-87, p. 40272)

2-120-660 Buildings owned or used by religious organizations.

No building that is owned by a religious organization and is used primarily as a place for the conduct of religious ceremonies shall be designated as a historical landmark without the consent of its owner. (Prior code § 21-69.1; Added. Coun. J. 3-11-87, p. 40272)

2-120-670 Public hearing—Notice requirements.

Prior to conducting a public hearing under this Chapter 2-120, the commission shall give written notice of the date, time, and place of the hearing to any owner of the subject property. The commission shall also cause to be posted, for a period of not less than 15 days immediately preceding the hearing, a notice stating the time, date, place, and matter to be considered at the hearing. The notice shall be prominently displayed on the place, building, object or structure, or on the public ways abutting the property, and, in the case of designation of areas or districts, the notices shall be placed on the principal boundaries thereof. In addition, not less than 15 days prior to the hearing, the commission shall cause a legal notice to be published in a newspaper of general circulation in the city of Chicago setting forth the nature of the hearing, the property, area, or district involved, and the date, time, and place of the scheduled public hearing. (Prior code § 21-70; Added. Coun. J. 3-11-87, p. 40272)

2-120-680 Public hearing—Presentation of evidence.

The commission shall provide a reasonable opportunity for all interested persons to present testimony or evidence

under such rules as the commission may adopt governing the proceedings of a hearing. At the hearing, each speaker shall state his name, address, and the interest which he represents. The hearing may be continued to a date certain, and a transcript and record shall be kept of all proceedings. A person, organization, or other legal entity whose use or whose members' use or enjoyment of the area, district, place, building, structure, work of art or other object proposed for designation may be injured by the designation or the failure of the commission to recommend designation, may become a party to a designation proceeding. Any person, organization, or other legal entity whose use or enjoyment of the area, district, place, building, structure, work of art or other object designated as a landmark may be injured by the approval or disapproval of a proposed alteration, construction, reconstruction, erection, demolition or relocation of a proposed or designated landmark, may become a party to a permit application proceeding. The foregoing shall include, without limitation, persons, organizations or other legal entities residing in, leasing or having an ownership interest in real property located within 500 feet of the property line of the proposed or designated landmark or within the proposed or designated landmark district. (Prior code § 21-71; Added. Coun. J. 3-11-87, p. 40272)

2-120-690 Commission recommendation following hearing.

Within 30 days after the conclusion of the public hearing, the commission shall determine whether to recommend the proposed landmark designation to the city council. If the commission makes a determination to recommend a designation to the city council, it shall set forth its recommendation in writing, including finding of fact relating to the criteria for designation in Section 2-120-620 that constitute the basis for its decision and shall transmit its recommendation to the city council, to the owner of the property and to the parties appearing at

the public hearing. If 51 percent of the owners of the property in a district responding to the request for consent file written objections to designation, a recommendation of landmark designation of that district must be approved by the affirmative vote of six members of the commission. The commission shall also transmit to the city council the official record of its proceedings concerning the recommended designation. If the proposed designation is of an area, place, building, structure, work of art or other object, the commission shall transmit its recommendation to the city council within 180 days from the date of receipt of the report of the commissioner of planning and development, or if no report has been received, within 240 days from the date of the commission's request for the report. If the proposed designation is of a district, the commission shall transmit its recommendation to the city council within 240 days from the date of receipt of the report of the commissioner of planning and development, or, if no report has been received, within 330 days from the date of the commission's request for the report. If, however, an extension of time has been granted under Section 2-120-650, the time allowed for submission under this section shall be extended by the same number of days. (Prior code § 21-72; Added. Coun. J. 3-11-87, p. 40272; Amend. 12-11-91, p. 10936)

2-120-700 City council consideration of designation—Plaques.

The city council shall give due consideration to the findings, recommendations and record of the commission in making its determination with respect to the proposed designation of any area, district, place, building, structure, work of art or other object having a special historical, community, architectural, or aesthetic interest or value. The city council may, in its discretion, hold public hearings on any such recommended designation. The city council may by ordinance designate an area, district, place, building, structure, work of art or other object

meeting one or more of the criteria stated in Section 2-120-620 hereof as a "Chicago Landmark." The city council may direct that a suitable plaque or plaques be created by the commission appropriately identifying said landmark. The plaque may be affixed to private property only if the owner or owners consent in writing. (Prior code § 21-73; Added. Coun. J. 3-11-87, p. 40272)

2-120-710 Preservation easements for landmarks.

The commission may consider and recommend to the city council the adoption of a preservation easement for any designated landmark or for any building, area, district or place which meets the criteria for landmark designation. If an owner of any property proposes to the commission a preservation easement, the commission shall hold a public hearing on the proposal in accordance with Sections 2-120-670 and 2-120-680 prior to recommending that the city council accept the proposed easement. (Prior code § 21-74; Added. Coun. J. 3-11-87, p. 40272)

2-120-720 Landmarks—Notice of designation.

Immediately following official designation by the city council, the commission shall notify the department of buildings of the city of Chicago of the designation. The commission shall also, within 10 days of the official designation, send a certified copy of the ordinance designating the property and a summary of the effects of designation to the owner of the property by certified mail, return receipt requested. The commission shall also file with the recorder of deeds of Cook County, the assessor of Cook County, the division of maps and plats of the department of planning and development of the city of Chicago, and all other relevant city departments, a certified copy of the designation ordinance. (Prior code § 21-75; Added. Coun. J. 3-11-87, p. 40272; Amend. 9-13-89, p. 4604; 12-11-91, p. 10936)

2-120-730 Amendment, [rescission], and reconsideration of designation.

Any designation of an area, district, place, building, structure, work of art or other similar object as a "Chicago Landmark" shall only be amended or rescinded in the same manner and procedure as the original designation was made. If the commission votes not to recommend a proposed designation to the city council, or if the city council has refused to designate a proposed "Chicago Landmark," then the commission may reconsider such proposed designation only if the commission finds that a substantial change in circumstances has occurred or new information becomes available relative to the criteria set forth in Section 2-120-620. (Prior code § 21-76; Added. Coun. J. 3-11-87, p. 40272; Amend. 10-23-91, p. 6879)

2-120-740 Alteration, relocation or demolition of landmarks—Permit review requirements.

No permit for alteration, construction, reconstruction, erection, demolition, relocation, or other work, shall be issued to any applicant by any department of the city of Chicago without the written approval of the commission for any area, place, building, structure, work of art or other object for which the commission has made a preliminary determination of landmark status or which has been designated as a "Chicago Landmark" in the following instances: (1) where such permit would allow the alteration or reconstruction of or addition to any improvement which constitutes all or a part of a landmark or proposed landmark; or (2) where such permit would allow the demolition of any improvement which constitutes all or a part of a landmark or proposed landmark; or (3) where a permit would allow the construction or erection of any addition to any improvement or the erection of any new structure or improvement on any land within a landmark district; or (4) where a permit would allow the construction or erection of any sign or billboard within the

public view which may be placed on, in, or immediately adjacent to any improvement which constitutes all or part of any landmark or proposed landmark. Any city department which receives an application for a permit as defined in this section shall forward the application, including copies of all detailed plans, designs, elevations, specifications, and documents relating thereto, to the commission within seven days of receipt thereof. It shall be a violation of this ordinance for an owner to perform, authorize or allow work or other acts requiring review without a permit. (Prior code § 21-77; Added. Coun. J. 3-11-87, p. 40272)

2-120-750 Permit review—Preexisting work.

Erection, construction, reconstruction, alteration, or demolition work begun pursuant to a properly issued permit prior to a preliminary determination of landmark status shall not be subject to review by the commission unless such permit has expired, been canceled or revoked, or the work is not diligently proceeding to completion in accordance with the Chicago Building Code. (Prior code § 21-78; Added. Coun. J. 3-11-87, p. 40272)

2-120-760 Application for permit—Preliminary decision by commission.

Within 15 days of its receipt of an application for a permit, as defined in Section 2-120-740, the commission shall issue in writing a preliminary decision approving or disapproving the application and shall notify the applicant and the appropriate city department of its preliminary decision. (Prior Code § 21-79; Added. Coun. J. 3-11-87, p. 40272)

2-120-770 Application for permit—Preliminary approval by commission.

If the commission finds that the proposed work will not adversely affect any significant historical or architec-

tural feature of the improvement or of the district, and is in accord with the Standards for Rehabilitation set forth by the United States Secretary of the Interior at 36 C.F.R. 67, as amended from time to time, as well as the commission's published procedures, the commission shall issue a preliminary approval of the application. Upon receipt of the commission's preliminary approval, the appropriate city department shall proceed in its usual manner with its own review of the application. No substantial change shall be made to the work proposed in the application for the permit after approval by the commission without resubmittal to the commission and approval thereof in the same manner as for the original application. (Prior code § 21-80; Added. Coun. J. 3-11-87, p. 40272)

2-120-780 Application for permit—Preliminary disapproval by commission.

If the commission finds that the proposed work will adversely affect or destroy any significant historical or architectural feature of the improvement or the district, or is inappropriate or inconsistent with the designation of the structure, area or district, or is not in accordance with the spirit and purposes of this ordinance, or does not comply with the Standards for Rehabilitation established by the Secretary of the Interior, the commission shall issue a preliminary decision disapproving the application for permit; provided, however, that if the construction, reconstruction, alteration, repair or demolition of any improvement could remedy conditions imminently dangerous to life, health or property, as determined in writing by the department of buildings, or the board of health, or the fire department, the commission shall approve the work notwithstanding other considerations relating to its designation as a "Chicago Landmark" or to the fact that the commission has made a preliminary determination of landmark status. (Prior code § 21-81; Added. Coun. J. 3-11-87, p. 40272; Amend. 9-13-89, p. 4604)

2-120-790 Preliminary disapproval—informal conference on alternative procedures.

Within 10 days after receiving the commission's notice of preliminary disapproval, the applicant for permit may request in writing an informal conference before the commission for the purpose of securing compromise regarding the proposed work so that the work will not, in the opinion of the commission, adversely affect any significant historical or architectural feature of the improvement or district and will be appropriate and consistent with the spirit and purposes of this ordinance. The commission shall hold such conference within 15 days after receipt of the request. The commission shall consider with the applicant every means for substantially preserving, protecting, enhancing and perpetuating the special historical or architectural feature of the improvement or district, including investigating the possibility of modifying the proposed work, the possibility of any alternative private use of the structure or structures that would substantially preserve its special features, and the possibility of public incentives for enhancing the use of the structure or structures or district involved. If the commission and the applicant for permit reach accord through the informal conference, the commission shall issue its approval of the application for permit as modified and so notify the applicant and the appropriate city departments in accordance with Sections 2-120-760 and 2-120-770. (Prior code § 21-82; Added. Coun. J. 3-11-87, p. 40272)

2-120-800 Application for permit—Public hearing.

If within 30 days after the conclusion of an informal conference under Section 2-120-790, the commission and applicant for permit have failed to reach accord or if the applicant fails to request an informal conference within 10 days of receiving notice as provided in Section 2-120-790, the commission shall hold a public hearing on the permit application in accordance with Sections 2-120-670

and 2-120-680. The public hearing shall be concluded within 90 days after the commission has disapproved the permit unless the applicant requests or agrees in writing to an extension of time. The commission shall, within 30 days after the conclusion of the hearing, issue a written decision approving or disapproving the permit application. The decision shall contain the findings of fact that constitute the basis for the decision consistent with the criteria in Section 2-120-740. The commission shall send written notice of its decision to the applicant by certified mail, return receipt requested, to the appropriate city departments, to all parties registered at the public hearing, and to the city council. (Prior code § 21-83; Added. Coun. J. 3-11-87, p. 40272)

2-120-810 Application for permit—Final commission decision.

The written decision of the commission approving or disapproving an application for a permit under Section 2-120-800 shall be on the date it issues a final administrative decision appealable to the Circuit Court of Cook County under the provisions of the Illinois Administrative Review Act, Illinois Revised Statutes, Chapter 110, Section 3-101 et seq. (1985). (Prior code § 21-84; Added. Coun. J. 3-11-87, p. 40272)

2-120-820 Expedited consideration of designation and permit.

Notwithstanding any other provision in this ordinance, if an owner of an area, parcel within a district, place, building, structure, work of art, or other object for which the commission has made a preliminary determination pursuant to Section 2-120-630 applies for a permit, and if the commission issues a preliminary disapproval of the application, pursuant to Sections 2-120-760 and 2-120-780, the commission shall schedule and conduct a public hearing on both the proposed designation and the application for permit and shall notify the city council of its

recommendations thereon within 90 days of the date the application for permit is received by the commission. If the commission fails to make its recommendation on designation to the city council within 90 days, then the application for the permit shall be deemed approved by the commission. If the commission submits its recommendation within 90 days and the city council does not pass an ordinance granting the proposed designation within 90 days after the recommendation of the commission, then the application for permit shall be deemed approved by the commission. (Prior code § 21-85; Added. Coun. J. 3-11-87, p. 40272)

2-120-830 Economic hardship exception—Application.

Upon final notification from the commission of its decision to deny an application for a permit to construct, reconstruct, alter, add to, demolish, or relocate property given a preliminary determination of landmark status or designated a "Chicago Landmark," the applicant may within 30 days apply to the commission for an economic hardship exception on the basis that the denial of permit will result in the loss of all reasonable and beneficial use of or return from the property. The commission shall develop regulations that describe factors, evidence and testimony that will be considered by the commission in making its determination. (Prior code § 21-86; Added. Coun. J. 3-11-87, p. 40272)

2-120-840 Economic hardship exception—Public hearing.

The commission shall schedule and hold a public hearing on the application for an economic hardship exception within 30 days from receipt of the application. Notice of the date, time, place and subject matter of the hearing shall be provided in accordance with Section 2-120-670 and, in addition, shall be provided in writing to all persons who presented testimony at the public

hearing on the permit application under Section 2-120-800. The hearing shall be concluded within 90 days after the application for exception has been received by the commission. All interested persons shall be allowed to participate in the hearing as provided in Section 2-120-680. The commission or the hearing officer may solicit expert testimony or relevant information from the applicant. A record of the proceedings shall be kept by the commission. (Prior code § 21-87; Added. Coun. J. 3-11-87, p. 40272.)

2-120-850 Economic hardship exception—Commission determination.

Within 60 days following conclusion of the hearing under Section 2-120-840, the commission shall determine whether denial of the permit denies the applicant all reasonable and beneficial use of or return from the property. The determination shall be accompanied by a report stating the reasons for the decision. In the case of a finding of economic hardship, the decision shall also be accompanied by a recommended plan to relieve any economic hardship. This plan may include, but is not limited to, property tax relief, loans or grants from the city of Chicago or other public or private sources, acquisition by purchase or eminent domain, building code modifications, changes in applicable zoning regulations including a transfer of development rights, or relaxation of the provisions of this ordinance sufficient to allow reasonable beneficial use of or return from the property. (Prior code § 21-88; Added. Coun. J. 3-11-87, p. 40272)

2-120-860 Economic hardship exception—Appeal from commission decision.

The determination by the commission pursuant to Section 2-120-870 approving or disapproving an application for an economic hardship exception shall, on the date it issues, be a final administrative decision appealable to the

Circuit Court of Cook County under the provisions of the Illinois Administrative Review Act, Illinois Revised Statutes, Section 3-101, et seq. (1985). (Prior code § 21-89; Added. Coun. J. 3-11-87, p. 40272)

2-120-870 Economic hardship exception—Report to city council.

Upon a determination by the commission pursuant to Section 2-120-850 finding an economic hardship, the commission shall forward its decision, report and proposal to the finance committee of the city council. (Prior code § 21-90; Added. Coun. J. 3-11-87, p. 40272)

2-120-880 Economic hardship exception—Finance committee consideration.

The finance committee of the city council shall give prompt consideration to the decision, report, and recommended plan to relieve economic hardship filed by the commission hereinabove provided, and shall recommend to the city council within 60 days after the receipt of said report whether or not said owner relief plan, as modified or not by the finance committee, shall be approved or disapproved. (Prior code § 21-91; Added. Coun. J. 3-11-87, p. 40272)

2-120-890 Economic hardship exception—City council decision.

The city council, within 30 days following said finance committee recommendation, shall approve or disapprove by ordinance a plan to relieve economic hardship to the owner. If the city council does not approve a plan to relieve economic hardship within the time specified, the plan to relieve economic hardship shall be deemed to be denied and the permit shall issue. If the city council approves a plan to relieve economic hardship that requires that any action be taken by city departments or agencies, the action shall be initiated within 30 days following pass-

age of the ordinance. (Prior code § 21-92; Added. Coun. J. 3-11-87, p. 40272)

2-120-900 Hearings and hearing officers.

In any hearing conducted by the commission pursuant to Sections 2-120-680, 2-120-800 or 2-120-840 hereof, the commission may designate any commission member or members or any other person as hearing officer to hold such hearing and take evidence. No member of the commission absent from the entire hearing shall be eligible to vote on any matter which is the subject of the hearing until such member is provided with transcripts or tapes of the testimony heard and evidence presented at such hearing. The commission, in making its determination, shall take into account any written opinion of the appointed hearing officer, if any, on the evidence presented. (Prior code § 21-93; Added. Coun. J. 3-11-87, p. 40272)

2-120-910 Penalties and remedies for violations.

The following penalties and remedies shall be applicable to violations of this ordinance:

1. Penalties. Failure to perform any act required by the ordinance codified in this Article XVII or performance of any action which is prohibited by said sections shall constitute a violation thereof. Every day on which a violation exists shall constitute a separate violation and a separate offense. Any person violating any of the provisions of this ordinance shall be subject to a fine of not less than \$500.00 nor more than \$1,000.00 for each offense. In addition, if the owner of property designated a "Chicago Landmark" wilfully or through gross negligence causes all or any part of the property to be demolished or substantially destroyed or altered without the approval of the city council or the commission, as the case may be, then no permit to construct a new structure or improve said structure shall be issued for said property or for the land upon which the landmark stood within five years of

the date of the demolition or alteration. Thereafter for a period of 20 years, commencing at the end of the five-year period herein before stated, any application for a building permit on the subject premises shall follow the procedure heretofore set out in Section 2-120-740 through 2-120-800.

2. Remedies. Notwithstanding the provisions of subsection (1) hereof, in the event any building or structure is erected, constructed, reconstructed, altered, added to or demolished in violation of this ordinance, the city of Chicago may institute appropriate proceedings to prevent or remedy such unlawful erection, construction, reconstruction, alteration, addition or demolition. (Prior code § 21-94; Added. Coun. J. 3-11-87, p. 40272)

2-120-920 Severability.

If any provision of this ordinance or application thereof to any person or circumstance is invalid, such invalidation shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable. (Prior code § 21-95; Added. Coun. J. 3-11-87, p. 40272)